CHAPTER 36

South Carolina Sales and Use Tax Act

CROSS REFERENCES

Drycleaning Facility Restoration Trust Fund, duties of Department of Revenue, see Section 44‑56‑435.

Vehicles, infrastructure maintenance fee, see Section 56‑3‑627.

ARTICLE 1

Citation and Definitions

**SECTION 12‑36‑5.** Short title.

 This chapter may be cited as the “South Carolina Sales and Use Tax Act”.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

The General Appropriation Act of 1951 [1951 (47) 546], from which the predecessor to this chapter was codified, is a valid enactment of the General Assembly; the retail sales and use tax therein imposed is a proper exercise of the taxing power of the State; and the State school bonds which are authorized will, when issued, constitute obligations of the tenor and terms set forth in the act. State ex rel. Roddey v. Byrnes (S.C. 1951) 219 S.C. 485, 66 S.E.2d 33.

**SECTION 12‑36‑10.** Effect of definitions.

 The words, terms, and phrases defined in this article have the meaning provided, except when the context clearly indicates a different meaning.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

United States Supreme Court Annotations

Tax legislation as violating Federal Constitution’s First Amendment ‑ Supreme Court cases. 103 L Ed 2d 951.

**SECTION 12‑36‑20.** “Business”.

 “Business” includes all activities, with the object of gain, profit, benefit, or advantage, either direct or indirect. Subactivities of a business which produce marketable commodities, used or consumed in the business, are taxable transactions.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

**SECTION 12‑36‑30.** “Person”.

 “Person” includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, any group or combination acting as a unit, the State, any state agency, any instrumentality, authority, political subdivision, or municipality.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1995 Act No. 61, Section 3.

Attorney General’s Opinions

While South Carolina Television Commission is instrumentality of State and exempt from Federal and State income taxes, it is not exempt from sales taxes. (Decided under former law.) Op Atty Gen, No. 1488 (February 14, 1963) 1963 WL 8242.

NOTES OF DECISIONS

In general 1

1. In general

Even though same persons were sole shareholders of two separate corporations, one of which sold used cars and then sold the retail installment sales contracts for those cars to the other corporation, the two corporations did not constitute one “person” within meaning of statute providing for credits for sales taxes paid on installment contracts charged off as bad debts, and thus the corporation which sold the contracts was not entitled to the requested refunds where the uncollectible debts were actually written off by the corporation which bought the contracts. South Carolina Dept. of Revenue v. Anonymous Co. A (S.C. 2009) 401 S.C. 513, 678 S.E.2d 255. Taxation 3672

**SECTION 12‑36‑40.** “Taxpayer”.

 “Taxpayer” means any person liable for taxes under this chapter.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

**SECTION 12‑36‑50.** “In this State” or “in the State”.

 “In this State” and “in the State” mean the area within the borders of the State of South Carolina, including all territories within the borders owned by or ceded to the United States of America.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Attorney General’s Opinions

A foreign corporation doing no business in this State is a nonresident for purposes of former 1962 Code Section 65‑1404(24) [former 1976 Code Section 12‑35‑50], however, it is a resident if it operates business establishments in the State or otherwise does business in this State. The extent and nature of the in‑state business must however be considered. A domestic corporation is a resident within the meaning of the section. 1975‑76 Op Atty Gen, No 4313, p 131 (March 25, 1976) 1976 WL 22933.

**SECTION 12‑36‑60.** “Tangible personal property”.

 “Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt. Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1995 Act No. 145, Part II, Section 104A.

CROSS REFERENCES

Sales and use tax regulations, communications services, see S.C. Code of Regulations R. 117‑329.

Attorney General’s Opinions

CATV Systems furnish the ways or means for transmitting communication as provided by former Sections 12‑35‑140 and 12‑35‑1150 and because of such, the gross proceeds derived therefrom are subject to the sales tax. 1982 Op Atty Gen, No 82‑41, p 47 (June 9, 1982) 1982 WL 155010.

NOTES OF DECISIONS

In general 1

1. In general

In an action to recover taxes paid under protest to the Tax Commission, the trial judge properly found that computer software consisting of magnetic tape which delivered information to the purchaser could be seen, weighed, measured, felt, and touched, within the meaning of former Section 12‑35‑140, and therefore was “tangible personal property” subject to the state’s sales and use tax. Citizens and Southern Systems, Inc. v. South Carolina Tax Com’n (S.C. 1984) 280 S.C. 138, 311 S.E.2d 717. Taxation 3653

**SECTION 12‑36‑70.** “Retailer” and “seller”.

 “Retailer” and “seller” include every person:

 (1)(a) selling or auctioning tangible personal property whether owned by the person or others;

 (b) furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individuals place of abode;

 (c) renting, leasing, or otherwise furnishing tangible personal property for a consideration;

 (d) operating a laundry, cleaning, dyeing, or pressing establishment for a consideration;

 (e) selling electric power or energy;

 (f) selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration. A person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or messages as used in this subitem (f) is not considered a processor or manufacturer;

 (2)(a) maintaining a place of business or qualifying to do business in this State; or

 (b) not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State.

 The department, when necessary for the efficient administration of this chapter, may treat any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom they operate or from whom they obtain the tangible personal property sold by them, regardless of whether they are making sales on their own behalf or on behalf of the dealer, distributor, supervisor, employer, or other person. The department may also treat the dealer, distributor, supervisor, employer, or other person as a retailer for purposes of this chapter.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1996 Act No. 458, Part II, Section 60A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 20, Taxes.

Attorney General’s Opinions

Sales tax is required on all laundry done at the Department of Corrections for which a charge is made. (Decided under former law.) 1962‑63 Op Atty Gen, No 1603, p 183 (December 16, 1963) 1963 WL 8348.

NOTES OF DECISIONS

Constitutional issues 1

Leases 2

1. Constitutional issues

The last paragraph of this section [former Code 1962 Section 65‑1359] does not amount to an unconstitutional attempt to delegate legislative power to an administrative agency of the executive department. State ex rel. Roddey v. Byrnes (S.C. 1951) 219 S.C. 485, 66 S.E.2d 33.

2. Leases

Any person who leases or rents tangible personal property is expressly declared by this section [former Code 1962 Section 65‑1359] to be a retailer and subject to taxation by former Code 1962 Section 65‑1401. Edisto Fleets, Inc. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 350, 182 S.E.2d 713.

The fact that a corporation is a wholly owned subsidiary and does no business except the rental or lease of vehicles to the parent does not preclude the imposition of a tax upon the wholly owned subsidiary on the proceeds of such rental. Edisto Fleets, Inc. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 350, 182 S.E.2d 713.

It would be unreasonable to conclude that the General Assembly amended this section in 1955 to define as a retailer a person who leases or rents tangible personal property and at the same time intended that such person be exempt from the tax because the lease or rental was not a sale of tangible personal property. (Decided under former law.) Edisto Fleets, Inc. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 350, 182 S.E.2d 713.

**SECTION 12‑36‑75.** Persons contracting with state commercial printer not subject to state income or sales and use taxes; conditions.

 (A) Notwithstanding any other provision of this chapter, tangible or intangible property that is:

 (1) owned or leased by a person that has contracted with a commercial printer for printing and used in connection with a printing contract; and

 (2) located at the premises of the commercial printer;

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing by reason of any printing contract which may include storing and shipping the items printed shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

 (B) Notwithstanding any other provision of this chapter, the following shall not cause a person that has contracted with a commercial printer for printing to have a duty to register as a retailer or to collect or remit the sales or use tax imposed by this chapter:

 (1) the ownership or leasing by that person of tangible or intangible property located at the South Carolina premises of the commercial printer and used in connection with printing contracts;

 (2) the sale by that person of property printed or imprinted at and shipped or distributed from the South Carolina premises of the commercial printer by the commercial printer;

 (3) the activities performed pursuant or incident to a printing contract by or on behalf of that person at the South Carolina premises of the commercial printer by the commercial printer; or

 (4) the activities performed pursuant or incident to a printing contract by the commercial printer in South Carolina for or on behalf of that person.

HISTORY: 1997 Act No. 155, Part II, Section 68B.

Library References

Taxation 3650, 3657.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2176.

**SECTION 12‑36‑80.** “Retailer maintaining a place of business in this State”.

 Retailer maintaining a place of business in this State, or any similar term, includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this State under the authority of the retailer or its subsidiary, regardless of whether the business or agent is located here permanently or temporarily or whether the retailer or subsidiary is admitted to do business within this State.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

**SECTION 12‑36‑90.** “Gross proceeds of sales”.

 Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

 (1) The term includes:

 (a) the proceeds from the sale of property sold on consignment by the taxpayer;

 (b) the proceeds from the sale of tangible personal property without any deduction for:

 (i) the cost of goods sold;

 (ii) the cost of materials, labor, or service;

 (iii) interest paid;

 (iv) losses;

 (v) transportation costs;

 (vi) manufacturers or importers excise taxes imposed by the United States; or

 (vii) any other expenses;

 (c) the fair market value of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it, except for:

 (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;

 (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;

 (iii) tangible personal property replacing defective parts underwritten warranty contracts if:

 (A) the warranty contract is given without charge at the time of original purchase of the defective property;

 (B) the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component; and

 (C) the warrantee is not charged for any labor or materials;

 (iv) an automobile furnished without charge to a high school for use solely in student driver training programs;

 (v) a new motor vehicle used by a dealer as a demonstrator.

 (2) The term does not include:

 (a) a cash discount allowed and taken on sales;

 (b) the sales price of property returned by customers when the full sales price is refunded in cash or by credit;

 (c) the value allowed for secondhand property transferred to the vendor as a trade‑in;

 (d) the amount of any tax imposed by the United States with respect to retail sales, whether imposed upon the retailer or the consumer, except for manufacturers or importers excise taxes;

 (e) a motor vehicle operated with a dealer, transporter, or manufacturer, or education license plate and used in accordance with the provisions of Section 56‑3‑2320 or 56‑3‑2330;

 (f) that portion of a charge taxed under Section 12‑36‑910(B)(3) or 12‑36‑1310(B)(3) attributable to the cost set by statute for a governmental license or permit;

 (g) fees imposed on the sale of motor oil, new tires, lead‑acid batteries, and white goods pursuant to Article 1, Chapter 96 of Title 44, including the refundable deposit when a lead‑acid battery core is not returned to a retailer;

 (h) the sales price, not including sales tax, of property on sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes. A taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is actually charged off for state income tax purposes may take a deduction for the sales price charged off as a bad debt or uncollectible account on a return filed pursuant to this chapter, except that if an amount charged off is later paid in whole or in part to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid. The deduction allowed by this provision must be taken within one year of the month the amount was determined to be a bad debt or uncollectible account;

 (i) interest, fees, or charges however described, imposed on a customer for late payment of a bill for electricity or natural gas, or both, whether or not sales tax is required to be paid on the underlying electricity or natural gas bill;

 (j) the environmental surcharge imposed pursuant to Section 44‑56‑450;

 (k) the alcoholic liquor by the drink excise tax imposed by Section 12‑33‑245.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1993 Act No. 164, Part II, Section 105D; 1994 Act No. 427, Section 1; 1994 Act No. 497, Part II, Section 70C; 1996 Act No. 431, Section 36; 1999 Act No. 100, Part II, Section 30; 2001 Act No. 77, Section 2.A, eff July 20, 2001; 2001 Act No. 89, Section 23, eff September 1, 2001; 2001 Act No. 89, Section 63, eff July 20, 2001, applicable with respect to retail sales occurring on or after that date; 2004 Act No. 237, Section 1, eff May 24, 2004; 2005 Act No. 139, Section 4, eff January 1, 2006; 2005 Act No. 161, Section 19.A, eff October 1, 2005; 2006 Act No. 386, Section 20.A, eff October 1, 2005; 2011 Act No. 32, Sections 2.A.1, 2.A.2, eff September 1, 2011.

Code Commissioner’s Note

2013 Act No. 30 rewrote Article 4, Chapter 56, Title 44. The environmental surcharge referenced in subsection (2)(j) is now provided by Section 44‑56‑450, instead of Section 44‑56‑430. This reference in the text has been changed.

Editor’s Note

2001 Act No. 77, Section 2.B., provides as follows:

“Notwithstanding the general effective date of this act, this section [adding subsection (2)(i)] takes effect upon approval of this act by the Governor and applies with respect to retail sales occurring on or after that date and sales before that date for all periods remaining open for the assessment of taxes by agreement or by operation of law. However, a refund is not due a taxpayer of sales and use tax paid on interest, fees, or charges, however described, imposed on a customer for late payment of a bill for electricity or natural gas, or both, before the effective date of this section.”

2004 Act No. 237, Section 11, provides in part as follows:

“The repeal or amendment of a code section by this act does not release or extinguish any tax, fee, interest, penalty, forfeiture, or liability for any period prior to the repeal or amendment. The repealed or amended code section or act must be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the tax, fee, interest, penalty, forfeiture, or liability.”

2005 Act No. 161, Section 19.D, provides as follows:

“This SECTION takes effect the first day of the fourth month after the approval of the Governor [became law without the Governor’s signature on June 9, 2005].”

2011 Act No. 32, Section 2.E., provides as follows:

“Notwithstanding the general effective date provided in this act, the provisions of this section take effect on the first day of the third month beginning after the date of approval of this act.”

CROSS REFERENCES

Sales and use tax regulations, gross proceeds of sales and sales price, see S.C. Code of Regulations R. 117‑318.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 26, Taxes.

Attorney General’s Opinions

Discussion of sales tax on a bonus discount. S.C. Op.Atty.Gen. (April 6, 1998) 1998 WL 261419.

NOTES OF DECISIONS

In general 1

1. In general

Substantial evidence supported Administrative Law Court’s (ALC) finding that the true object of transactions at issue was the rental or lease of portable toilets, rather than a service, and as such gross proceeds from the transactions were subject to sales and use tax; website of portable toilet business owner stated that in 1969, her company “became the first portable toilet rental business in the area,” terms of owner’s “service agreement” stated that the customer requests “delivery and use of portable toilet(s),” and there was evidence that the customer was paying for use of owner’s personal property for a limited amount of time, an arrangement essential to a lease or rental. Boggero v. South Carolina Dept. of Revenue (S.C.App. 2015) 414 S.C. 277, 777 S.E.2d 842. Taxation 3645

“Gross proceeds,” for purposes of hotel room tax statute, includes the value obtained from the rental of accommodations without deduction for the cost of services. Travelscape, LLC v. South Carolina Dept. of Revenue (S.C. 2011) 391 S.C. 89, 705 S.E.2d 28. Innkeepers 4

Service and facilitation fees which online travel agency retained for its services in booking hotels in South Carolina were subject to sales taxation as the “gross proceeds derived from the rental or charges for any rooms.” Travelscape, LLC v. South Carolina Dept. of Revenue (S.C. 2011) 391 S.C. 89, 705 S.E.2d 28. Innkeepers 4

Corporation which sold used cars, paid the sales taxes on the transactions, and then sold to another corporation the retail installment sales contracts for those cars, was not entitled to a refund of sales taxes paid on contracts charged off by the purchasing corporation as bad debt; fact that the selling corporation sold the contracts for an amount determined by the historical default rate of its customers did not mean that it incurred “bad debt,” since it assigned all right, title, and interest to the purchasing corporation. South Carolina Dept. of Revenue v. Anonymous Co. A (S.C. 2009) 401 S.C. 513, 678 S.E.2d 255. Taxation 3700

Where a retail seller charged a lay away fee on all lay away sales which was not refundable and did not vary with the amount of the sale nor the time period of the lay away, and the seller retained the goods purchased until the full price was paid, the fee was obviously charged for the service rendered in making lay away sales and was therefore within the definition of “gross proceeds of sales” under former Section 12‑35‑30, and thus subject to the sales tax imposed under former Section 12‑35‑510. The fees charged were not exempt from the sales tax as finance charges within the meaning of South Carolina Tax Commission Regulation 117‑174.59, because no credit was advanced to the customer on a lay away sale but rather the sale was made on the condition that the customer could not obtain possession until the full purchase price was paid. Meyers Arnold, Inc. v. South Carolina Tax Com’n (S.C.App. 1985) 285 S.C. 303, 328 S.E.2d 920.

**SECTION 12‑36‑100.** “Sale” and “purchase”.

 “Sale” and “purchase” mean any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

 (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;

 (2) a rental, lease, or other form of agreement;

 (3) a license to use or consume; and

 (4) a transfer of title or possession, or both.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Attorney General’s Opinions

Discussion of whether sales tax should be paid when leasing a car and again when buying the same car at the end of the lease period. S.C. Op.Atty.Gen. (Feb. 6, 1998) 1998 WL 115502.

Retail sale of tangible personal property is not subject to local option sales tax when seller located within county that imposes tax is required to deliver property to purchaser outside that county. 1991 Op Atty Gen, No 91‑47, p 121 (July 30, 1991).

Rental of tangible personal property is a sale of tangible personal property and capable of being treated as a casual or occasional sale. (Decided under former law.) 1965‑66 Op Atty Gen, No. 1979, p. 29 (February 18, 1966) 1966 WL 8460.

NOTES OF DECISIONS

In general 1

1. In general

The terms “sale” and “purchase” are inextricably related and bound together and must be so construed. (Decided under former statute.) Edisto Fleets, Inc. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 350, 182 S.E.2d 713.

The term “purchase” specifically refers to the lease or rental of tangible personal property. (Decided under former statute.) Edisto Fleets, Inc. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 350, 182 S.E.2d 713.

It would be unreasonable to conclude that the General Assembly amended former Code 1962 Section 65‑1359 in 1955 to define as a retailer a person who leases or rents tangible personal property and at the same time intended that such person be exempt from the tax because the lease or rental was not a sale of tangible personal property. Edisto Fleets, Inc. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 350, 182 S.E.2d 713.

Although the definition of the term “sale” as found in this section [former Code 1962 Section 65‑1360] does not specifically refer to the lease or rental of tangible personal property, the same nonetheless is included because of the definition of the term “purchase” that is provided in former Code 1962 Section 65‑1357. Edisto Fleets, Inc. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 350, 182 S.E.2d 713.

For any tangible personal property to be transferred, it must be at least identifiable. (Decided under former law.) Colonial Stores, Inc. v. South Carolina Tax Commission (S.C. 1969) 253 S.C. 14, 168 S.E.2d 774.

Where premium merchandise itself is not transferred to the customers in connection with the sale or sales of regular merchandise, but to the contrary, it is used by the store as part and parcel of a business promotion scheme, the use tax paid thereon is properly paid and collected. (Decided under former statute.) Colonial Stores, Inc. v. South Carolina Tax Commission (S.C. 1969) 253 S.C. 14, 168 S.E.2d 774.

**SECTION 12‑36‑110.** Sale at retail; retail sale.

 Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

 (1) The terms include:

 (a) sales of building materials to construction contractors, builders, or landowners for resale or use in the form of real estate;

 (b) sales of tangible personal property to manufacturers, processors, compounders, quarry operators, or mine operators, which are used or consumed by them, and do not become an ingredient or component part of the tangible personal property manufactured, processed, or compounded for sale;

 (c) the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale, except:

 (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;

 (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;

 (iii) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale;

 (iv) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property;

 (v) a motor vehicle operated with a dealer, transporter, or manufacturer, or education license plate and used in accordance with the provisions of Section 56‑3‑2320 or 56‑3‑2330;

 (d) the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed;

 (e) sales to contractors for use in the performance of construction contracts;

 (f) [Reserved];

 (g) sales of tangible personal property, other than cigarettes and soft drinks in closed containers, to vendors who sell the property through vending machines. The vendors are deemed to be the users or consumers of the property;

 (h) sales of prepared meals, or unprepared food products used to prepare meals, to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, educational institutions, boarding houses, and transportation companies, if furnished as part of the service rendered. These institutions and companies are deemed to be the users or consumers of the property;

 (i) sales of drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, medical doctors, dentists, optometrists, and veterinarians, if furnished to their patients as a part of the service rendered. These institutions, companies, and professionals are deemed to be the users or consumers of the property;

 (j) sales, not otherwise exempted, when reimbursed or paid in whole or in part by Medicare or Medicaid. However, only the net amount reimbursed by Medicare and Medicaid is subject to the tax, if the vendor is prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed;

 (k) sales of all local telecommunications services by local exchange companies (LECs) to customer owned coin‑operated telephone (COCOT) providers, as those terms are defined by the South Carolina Public Service department. The COCOT providers that purchase these services in order to provide payphone services to their customers are considered to be the users and consumers of the services, and are not subject to sales tax for their subsequent sale of local telecommunications services to their COCOT customers;

 (l) sales of tangible personal property to veterinarians. The veterinarians are deemed to be the users or consumers of the property whether used in the rendering of professional services or sold outright as part of the veterinarian practice and not furnished as a part of professional services rendered.

 (2) The terms do not include sales of tangible personal property to a manufacturer or construction contractor when the tangible personal property is subsequently processed, partially or completely fabricated, or manufactured in this State by the manufacturer or contractor, for use in the performance of a construction contract if the property is transported to, assembled, installed, or erected at a job site outside the State and thereafter used solely outside the State.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1993 Act No. 164, Part II, Section 105E; 1994 Act No. 497, Part II, Sections 70D, 120; 1994 Act No. 516, Section 15; 1996 Act No. 431, Section 5; 1997 Act No. 46, Section 1.

Library References

Taxation 3646.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2171.

Attorney General’s Opinions

Energy efficiency standards set forth in Section 12‑36‑2110(B)(4) may be considered as group so as to allow trade‑offs as long as equivalent level of energy efficiency is achieved. 1993 Op Atty Gen, No 93‑2 (January 25, 1993) 1993 WL 720069.

County governing body is required to furnish probate court with office space, furnishings, books and so forth within county seat but not necessarily within walls of county courthouse. 1993 Op Atty Gen, No 93‑1 (January 12, 1993) 1993 WL 720067.

The term “separate charge” as used in former Section 12‑35‑110 of the Code refers to a designated price for a particular meal and not to a lump sum semester or annual charge for board; an educational institution furnishing meals and beverages under a board plan is deemed under Act 623 of 1978 to be the user or consumer of those meals and beverages. 1978 Op Atty Gen, No 78‑161, p 191 (September 28, 1978) 1978 WL 22629.

A wholesaler cannot sell tangible personal property to the user or consumer thereof unless licensed as a retail merchant. (Decided under former law.) 1967‑68 Op Atty Gen, No 2422, p 77 (February 23, 1968) 1968 WL 8825.

NOTES OF DECISIONS

In general 1

United States government purchases 2

1. In general

A professional house mover could not be assessed sales tax on old houses which he bought, restored, moved to a different lot, and sold. The labor used to restore the houses was a service not subject to the sales tax. The sale of transporting the houses was an exempt sale under former 12‑35‑550(12). Former Section 12‑35‑510 places the duty to collect and pay sales taxes on retail sellers, who in this case were the original owners of the houses. (Decided under former Section 12‑35‑110.) Cox v. South Carolina Tax Com’n (S.C. 1985) 285 S.C. 224, 329 S.E.2d 739.

Sales were not retail sales where South Carolina corporation which was engaged in business of manufacturing and selling quilts sold large number of these quilts at its South Carolina plant to various out‑of‑state churches, and where churches bought quilts for resale in fund raising projects conducted in their home states. (Decided under former law.) Stanton Quilting Co., Inc. v. South Carolina Tax Com’n (S.C.App. 1984) 281 S.C. 133, 314 S.E.2d 844.

A trucking company was subject to a use tax imposed by Section 12‑35‑810 on the out‑of‑state purchase of 50 trailers, where the trailers were “used” in South Carolina within the meaning of Section 12‑35‑160 in that the company transported the trailers to a particular location within the state, made alterations and changes to them, put them into service in South Carolina, and registered them within the state for property tax purposes, where the trailers were “stored” within the state within the meaning of Section 12‑35‑130 for a period of approximately two to three weeks before they were dispatched to pick up their first load of freight, and where the sale of the trailers was a retail sale within the meaning of Section 12‑35‑110 in that it was not a wholesale sale as defined by Section 12‑35‑170, but, rather, a sale to the ultimate user and consumer of the trailers. (Decided under former Section 12‑35‑110.) Senn Trucking Co. v. Wasson (S.C. 1984) 280 S.C. 279, 312 S.E.2d 252, certiorari denied 104 S.Ct. 3537, 467 U.S. 1252, 82 L.Ed.2d 841.

2. United States government purchases

Procurement activities under the contract with Atomic Energy Commission to establish and manage the Savannah River Project resulted in the sale of goods and services to the United States, and the purchases were those of the United States and immune from ordinary sales and use taxes upon the purchaser or upon the purchasing agent. (Decided under former law.) U. S. v. Livingston, 1959, 179 F.Supp. 9, affirmed 80 S.Ct. 1611, 364 U.S. 281, 4 L.Ed.2d 1719, rehearing denied 81 S.Ct. 35, 364 U.S. 855, 5 L.Ed.2d 79.

**SECTION 12‑36‑120.** “Wholesale sale” and “sale at wholesale”.

 “Wholesale sale” and “sale at wholesale” mean a 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;

 (2) tangible personal property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or products manufactured or compounded for sale;

 (3) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property into products for sale;

 (4) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property;

 (5) food or drink products to licensed retail merchants for use as ingredients in preparing ready‑to‑eat food or drink sold at retail. These products include cooking oil used as an ingredient. However, items used or consumed by licensed retail merchants to prepare ready‑to‑eat food or drink, such as hickory chips, barbecue briquettes, gas, or electricity are subject to tax.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1992 Act No. 361, Section 16(A); 1996 Act No. 431, Section 6.

CROSS REFERENCES

Sales and use tax regulations, containers and other packaging material, see S.C. Code of Regulations R. 117‑312.

Sales and use tax regulations, manufacturers, processors, compounders, miners, and quarries, see S.C. Code of Regulations R. 117‑302.

Attorney General’s Opinions

A wholesaler cannot sell tangible personal property to the user or consumer thereof unless licensed as a retail merchant. (Decided under former law.) 1967‑68 Op Atty Gen, No 2422, p 77 (February 23, 1968) 1968 WL 8825.

NOTES OF DECISIONS

In general 1

1. In general

Sales were not retail sales where South Carolina corporation which was engaged in business of manufacturing and selling quilts sold large number of these quilts at its South Carolina plant to various out‑of‑state churches, and where churches bought quilts for resale in fund raising projects conducted in their home states. (Decided under former Section 12‑35‑170.) Stanton Quilting Co., Inc. v. South Carolina Tax Com’n (S.C.App. 1984) 281 S.C. 133, 314 S.E.2d 844.

A trucking company was subject to a use tax imposed by Section 12‑35‑810 on the out‑of‑state purchase of 50 trailers, where the trailers were “used” in South Carolina within the meaning of Section 12‑35‑160 in that the company transported the trailers to a particular location within the state, made alterations and changes to them, put them into service in South Carolina, and registered them within the state for property tax purposes, where the trailers were “stored” within the state within the meaning of Section 12‑35‑130 for a period of approximately two to three weeks before they were dispatched to pick up their first load of freight, and where the sale of the trailers was a retail sale within the meaning of Section 12‑35‑110 in that it was not a wholesale sale as defined by Section 12‑35‑170, but, rather, a sale to the ultimate user and consumer of the trailers. (Decided under former Section 12‑35‑170.) Senn Trucking Co. v. Wasson (S.C. 1984) 280 S.C. 279, 312 S.E.2d 252, certiorari denied 104 S.Ct. 3537, 467 U.S. 1252, 82 L.Ed.2d 841.

Characterizations of sale as wholesale or retail. A food service that sold meals to sponsor organizations that conducted federally supported summer lunch programs for indigent children was properly characterized as a retail seller by the tax commission and assessed for sales taxes where no sale was ever contemplated or was ever made by the sponsor organizations to either the children or the Department of Agriculture; accordingly, the last transaction for a consideration involved the food service as vendor and the organizations as vendees. (Decided under former Section 12‑35‑170.) ARA Services, Inc. v. South Carolina Tax Commission (S.C. 1978) 271 S.C. 146, 246 S.E.2d 171, certiorari denied 99 S.Ct. 725, 439 U.S. 1048, 58 L.Ed.2d 707.

Corporation selling food services to colleges and universities, where food is purchased for resale, students buying food from college rather than corporation, is wholesaler rather than retailer, and as such, not liable for either sales or use taxes. (Decided under former Section 12‑35‑170.) Slater Corp. v. South Carolina Tax Commission (S.C. 1978) 270 S.C. 405, 242 S.E.2d 439.

**SECTION 12‑36‑130.** “Sales price”.

 “Sales price” means the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

 (1) The term includes:

 (a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise; and

 (b) any manufacturers or importers excise tax imposed by the United States.

 (2) The term does not include:

 (a) a cash discount allowed and taken on the sale;

 (b) an amount charged for property, which is returned by the purchaser, and the full amount is refunded in cash or by credit;

 (c) the value allowed for secondhand property transferred to the vendor in partial payment; and

 (d) the amount of any tax imposed by the United States with respect to retail sales, whether imposed upon the retailer or consumer, except for manufacturers or importers excise taxes.

 For purposes of the sale of an “audiovisual master” as defined in Section 12‑36‑2120(55), sales price is the total amount for which the audiovisual master is sold, including charges for any services that go into its fabrication, manufacture, or delivery that are a part of the sale valued in money whether paid in money, or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction from it on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses, or any other expenses whatsoever.

 The term “sales price” as defined in this section, also does not include the sales price, not including tax, of property on sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes. A taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is actually charged off for state income tax purposes may take a deduction for the sales price charged off as a bad debt or uncollectible account on a return filed pursuant to this chapter, except that if an amount charged off is later paid in whole or in part to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid. The deduction allowed by this paragraph must be taken within one year of the month the amount was determined to be a bad debt or uncollectible account.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 2000 Act No. 283, Section 2(A), eff August 1, 2000; 2001 Act No. 89, Section 24, eff September 1, 2001.

CROSS REFERENCES

Sales and use tax regulations, gross proceeds of sales and sales price, see S.C. Code of Regulations R. 117‑318.

**SECTION 12‑36‑140.** “Storage” and “use”.

 (A) “Storage” includes any keeping or retaining 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.

 (B) “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; but it does not include the sale of that property in the regular course of business.

 (C) “Storage” and “use” do not include the keeping, retaining, or exercising of any right or power over tangible personal property:

 (1) for the exclusive purpose of subsequently transporting it outside the State for first use;

 (2) for the purpose of first being manufactured, processed, or compounded into other tangible personal property to be transported and used solely outside the State; or

 (3) for the purpose of being distributed as (i) cooperative direct mail promotional advertising materials, or (ii) promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus who are exempt from income taxation pursuant to Internal Revenue Code Section 501(c) by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the State. For purposes of this item, “cooperative direct mail promotional advertising materials” means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 2000 Act No. 387, Part II, Section 63A, eff June 1, 2001; 2005 Act No. 145, Section 1.A, eff June 7, 2005.

Editor’s Note

2005 Act No. 145, Section 1.C, provides as follows:

“This section takes effect for tax years beginning after 2005, but does not authorize or permit refunds of taxes paid.”

NOTES OF DECISIONS

In general 1

1. In general

The use of the Savannah River Plant of the Atomic Energy Commission and of goods and materials purchased for its operation is so completely that of the United States, that, while one may concede the possibility of advantage to the company contracting to establish and manage the plant, that company does not become subject to taxation upon the value of the plant or its purchases when, by contract, and in good conscience without a contract, the United States must pay any tax exacted. (Decided under former law.) U. S. v. Livingston, 1959, 179 F.Supp. 9, affirmed 80 S.Ct. 1611, 364 U.S. 281, 4 L.Ed.2d 1719, rehearing denied 81 S.Ct. 35, 364 U.S. 855, 5 L.Ed.2d 79.

A trucking company was subject to a use tax imposed by Section 12‑35‑810 on the out‑of‑state purchase of 50 trailers, where the trailers were “used” in South Carolina within the meaning of Section 12‑35‑160 in that the company transported the trailers to a particular location within the state, made alterations and changes to them, put them into service in South Carolina, and registered them within the state for property tax purposes, where the trailers were “stored” within the state within the meaning of Section 12‑35‑130 for a period of approximately two to three weeks before they were dispatched to pick up their first load of freight, and where the sale of the trailers was a retail sale within the meaning of Section 12‑35‑110 in that it was not a wholesale sale as defined by Section 12‑35‑170, but, rather, a sale to the ultimate user and consumer of the trailers. (Decided under former Section 12‑35‑130.) Senn Trucking Co. v. Wasson (S.C. 1984) 280 S.C. 279, 312 S.E.2d 252, certiorari denied 104 S.Ct. 3537, 467 U.S. 1252, 82 L.Ed.2d 841.

Tax on premium merchandise used as part of business promotion scheme. Where premium merchandise, itself is not transferred to the customers in connection with the sale or sales of regular merchandise, but to the contrary, it is used by the store as part and parcel of a business promotion scheme, the use tax paid thereon is properly paid and collected. (Decided under former law.) Colonial Stores, Inc. v. South Carolina Tax Commission (S.C. 1969) 253 S.C. 14, 168 S.E.2d 774. Taxation 3639

**SECTION 12‑36‑150.** “Transient construction property”.

 “Transient construction property” means motor vehicles, machines, machinery, tools, or other equipment, other tangible personal property brought, imported, or caused to be brought into this State for use, or stored 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 of it.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

CROSS REFERENCES

Use tax applicable to transient construction property, see Section 12‑36‑1320.

ARTICLE 5

Retail License

**SECTION 12‑36‑510.** Retail license requirements; license tax; “special events”.

 (A) Before engaging in business:

 (1) Every retailer shall obtain a retail license for each permanent branch, establishment, or agency and pay a license tax of fifty dollars for each retail license at the time of application.

 (2) Every artist and craftsman selling at arts and crafts shows and festivals, products they have created or assembled, shall obtain a retail license and pay a license tax of twenty dollars at the time of application. This license may be used only for one location at a time.

 (3) Every retailer operating a transient or temporary business within this State shall obtain a retail license and pay a license tax of fifty dollars at the time of application. This license may be used only for one location at a time. For purposes of this item, “transient business” means a business, other than one licensed under item (2) of this section, which does not have a permanent retail location in this State, but otherwise makes retail sales within this State. “Temporary business” means a business which makes retail sales in this State for no more than thirty consecutive days at one location.

 (B) A retail license is not required of:

 (1) persons selling at flea markets or conducting a yard sale not more than once a quarter, unless they make retail sales at flea markets or yard sales as a regular business;

 (2) organizations conducting concession sales at festivals if the gross proceeds of the sales are exempt from sales tax pursuant to Section 12‑36‑2120(39);

 (3) persons furnishing accommodations to transients for one week or less in any calendar quarter; however, accommodations taxes must be remitted annually, on forms prescribed by the department, by April 15 of the following year. This item does not apply to rental agencies or persons having more than one rental unit;

 (4) persons making sales which are exempt under Section 12‑36‑2120(41).

 (C) Retailers making sales at a special event, in lieu of the licensing requirements of this section and discount provisions of Section 12‑36‑2610, shall file a special events sales tax return.

 For purposes of this subsection, the special event sales tax return may be used only for one special event and must be filed with the department together with the tax due within five days of the completion of the special event. However, the department may require payment upon demand.

 “Special event” means a promotional show, trade show, fair, festival, or carnival for which an admissions fee is required for entering the event. In addition, the event must be operated for a period of less than twelve consecutive days.

 The provisions of this subsection do not apply to retailers licensed pursuant to subsection (A)(2) or (3).

 (D) The department may determine which retail license or licenses a retailer must obtain.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1994 Act No. 383, Section 1; 1999 Act No. 114, Section 3H.

CROSS REFERENCES

Administration, collection, and enforcement of monthly fee assessable on motor oil or similar lubricants sold at wholesale or ex‑tax motor oil or similar lubricants imported into the state, in same manner sales and use taxes are collected pursuant to this Chapter, see Section 44‑96‑160.

Administration, collection and enforcement of monthly fee assessable on sale and delivery by wholesalers of lead‑acid batteries in the state, in same manner sales and use taxes are collected pursuant to this Chapter, see Section 44‑96‑180.

Administration, collection, and enforcement of monthly fee assessable on sales of new tires to ultimate consumers, in same manner sales and use taxes are collected pursuant to this Chapter, see Section 44‑96‑170.

Administration, collection and enforcement of monthly fee assessable on sales of white goods to ultimate consumers, in same manner sales and use taxes are collected pursuant to this Chapter, see Section 44‑96‑200.

Department of Revenue to provide to political subdivisions information reported to Department by businesses licensed under this section, see Section 12‑4‑310.

Sales and use tax regulations, retail license, see S.C. Code of Regulations R. 117‑300.

Prohibition against divulging information contained in any report or return required under Title 12, Chapter 36, see Section 12‑54‑240.

Proof of possession of retail business license as prerequisite to obtaining dealer or wholesaler motor vehicle license plate, see Section 56‑3‑2320.

Library References

Licenses 15(1).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

This article does not violate S. C. Const., Art. 10, Section 1, which provides that “the General Assembly may provide for a graduated tax on incomes, and for a graduated license on occupations and business,” although the graduation of the tax provided in this section [former Code 1962 Section 65‑1382] is not a perfect or limitless graduation. State ex rel. Roddey v. Byrnes (S.C. 1951) 219 S.C. 485, 66 S.E.2d 33. Taxation 3434; Taxation 3525

**SECTION 12‑36‑520.** Bond requirement for retailers without permanent sales location.

 Before doing business in this State or receiving a retail license, retailers subject to the license requirements of this article not having a permanent retail sales location may be required to make a cash deposit or post bond. The bond, determined by the department, must be equal to at least the retailers annual sales tax liability.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Licenses 26.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 67 to 69.

**SECTION 12‑36‑540.** License application information; separate license required for each location.

 The application for the retail license must show the name and address and other information the department may require for each retail sales location. The department shall issue a separate license to each retail sales location.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

CROSS REFERENCES

Department of Revenue to provide to political subdivisions information reported to Department pursuant to requirements of this section, see Section 12‑4‑310.

Library References

Licenses 22.

Westlaw Topic No. 238.

C.J.S. Architects Section 12.

C.J.S. Licenses Sections 70 to 72.

**SECTION 12‑36‑550.** Duration of license’s validity; display of license; license not transferable or assignable.

 The license provided for in this article:

 (1) is valid so long as the person to whom it is issued continues in the same business, unless revoked by the department. It is presumed that a retailer is not continuing in the same business and must surrender the retail sales license if the retailer has no retail sales for twenty‑four consecutive months. To allow the license to remain valid, the retailer may submit an affidavit to the department swearing that the business is continuing;

 (2) must at all times be conspicuously displayed at the place for which it was issued;

 (3) is not transferable or assignable.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 2000 Act No. 399, Section 3(F), eff August 17, 2000.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Architects Sections 13 to 14.

C.J.S. Licenses Sections 80, 82 to 100.

Attorney General’s Opinions

Discussion of whether local law enforcement authorities can enforce this section. S.C. Op.Atty.Gen. (Jan. 29, 1996) 1996 WL 82900.

**SECTION 12‑36‑560.** Operation of business without license or with license suspended; penalty.

 A person liable for the license tax provided by this article who engages in business as a seller or retailer in this State without a retail license or after the license has been suspended, and each officer of a corporation which engages in business without a retail license or after the license is suspended, is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than two hundred dollars or imprisonment not exceeding thirty days, or both. Offenses under this section are triable in magistrate’s court.

HISTORY: 1992 Act No. 361, Section 16(J).

Library References

Licenses 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 124.

Attorney General’s Opinions

Discussion of whether local law enforcement authorities can enforce this section. S.C. Op.Atty.Gen. (Jan. 29, 1996) 1996 WL 82900.

**SECTION 12‑36‑570.** Penalty for failure to pay license tax.

 A person liable for the license tax provided by this article who fails to pay the tax or obtain the license within the time provided or who fails to comply with a lawful regulation of the department is liable for a penalty not to exceed five hundred dollars.

HISTORY: 1992 Act No. 361, Section 16(J).

Library References

Licenses 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 124.

ARTICLE 9

Sales Tax

**SECTION 12‑36‑910.** Five percent tax on tangible personal property; laundry services, electricity, communication services, and manufacturer‑consumed goods.

 (A) A sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

 (B) The sales tax imposed by this article also applies to the:

 (1) gross proceeds accruing or proceeding from the business of providing or furnishing any laundering, dry cleaning, dyeing, or pressing service, but does not apply to the gross proceeds derived from coin‑operated laundromats and dry cleaning machines;

 (2) gross proceeds accruing or proceeding from the sale of electricity;

 (3)(a) gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages. Gross proceeds from the sale of prepaid wireless calling arrangements subject to tax at retail pursuant to item (5) of this subsection are not subject to tax pursuant to this item. Effective for bills rendered after August 1, 2002, charges for mobile telecommunications services subject to the tax under this item must be sourced in accordance with the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code. The term “charges for mobile telecommunications services” is defined for purposes of this section the same as it is defined in the Mobile Telecommunications Sourcing Act. All other definitions and provisions of the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code are adopted. Telecommunications services are sourced in accordance with Section 12‑36‑1920;

 (b)(i) for purposes of this item, a “bundled transaction” means a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for tax purposes;

 (ii) for bills rendered on or after January 1, 2004, that include telecommunications services in a bundled transaction, if the nonitemized price is attributable to properties or services that are taxable and nontaxable, the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes;

 (4) fair market value of tangible personal property manufactured within this State, and used or consumed within this State by the manufacturer;

 (5) gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements;

 (a) “Prepaid wireless calling arrangements” means communication services that:

 (i) are used exclusively to purchase wireless telecommunications;

 (ii) are purchased in advance;

 (iii) allow the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and

 (iv) are sold in units or dollars which decline with use in a known amount;

 (b) All charges for prepaid wireless calling arrangements must be sourced to the:

 (i) location in this State where the over‑the‑counter sale took place;

 (ii) shipping address if the sale did not take place at the seller’s location and an item is shipped; or

 (iii) either the billing address or location associated with the mobile telephone number if the sale did not take place at the seller’s location and no item is shipped.

 (C) Notwithstanding other provisions in this article or Article 13, Chapter 36, of this title, the sales or use tax imposed by those articles does not apply to the gross proceeds accruing or proceeding from charges for or use of data processing. As used in this subsection, “data processing” means the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1992 Act No. 361, Section 16(B); 1995 Act No. 145, Part II, Section 105A; 2001 Act No. 89, Sections 25, 26, eff September 1, 2001 [effective the first day of the second month following approval by the Governor (approved July 20, 2001)]; 2002 Act No. 334, Section 11, eff June 24, 2002; 2003 Act No. 69, Section 3.OO, eff June 18, 2003; 2005 Act No. 161, Section 19.B, eff October 1, 2005; 2005 Act No. 161, Section 30.B, eff September 1, 2005; 2006 Act No. 386, Section 21.A, eff October 1, 2005; 2006 Act No. 388, Pt I, Section 1.B.1, eff October 1, 2006; 2007 Act No. 115, Section 3.A, eff November 1, 2007; 2011 Act No. 32, Section 2.B, eff September 1, 2011.

Editor’s Note

2011 Act No. 32, Section 2.E., provides as follows:

“Notwithstanding the general effective date provided in this act, the provisions of this section take effect on the first day of the third month beginning after the date of approval of this act.”

CROSS REFERENCES

Communications services, see S.C. Code of Regulations R. 117‑329.

Dual party relay charge collections, see Section 58‑9‑2535.

Interstate commerce, see S.C. Code of Regulations R. 117‑334.

Laundry, launderette, cleaning, dyeing or pressing establishments, see S.C. Code of Regulations R. 117‑303.

Sales to, or purchases by, the state, counties, municipalities and other political subdivisions of the state, see S.C. Code of Regulations R. 117‑304.

Universal Service Fund, sum determination, contribution remittances and collections, fee retentions, distributions, see Section 58‑9‑280.

Library References

Taxation 3636 to 3673.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2166 to 2176, 2180 to 2188.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: State and local government; state sales tax exemption for machinery parts. 34 S.C. L. Rev. 206 (August 1982).

State Sales Tax: Lease and Rental of Tangible Personal Property. 24 S.C. L. Rev. 656.

Attorney General’s Opinions

Discussion of whether a business owner who provides a service of delivering portable toilets should be charging sales tax for her service. S.C. Op.Atty.Gen. (May 1, 2017) 2017 WL 1955654.

Discussion of whether a caterer’s “services” of purchasing alcohol and transporting it to venues for distribution are subject to sales tax. S.C. Op.Atty.Gen. (May 1, 2017) 2017 WL 1955654.

Discussion of whether a food item purchased from a vending machine is subject to sales tax. S.C. Op.Atty.Gen. (Oct. 24, 2007) 2007 WL 3317620.

Items such as napkins, forks, spoons, and straws sold to restaurant owners by wholesalers are subject to taxation at the time of the sale. S.C. Op.Atty.Gen. (March 20, 2007) 2007 WL 1031453.

Discussion of sales tax on a bonus discount. S.C. Op.Atty.Gen. (April 6, 1998) 1998 WL 261419.

Sales to Federal Government upon requisition or order of South Carolina National Guard, payment for which is from Federal Treasury upon order of Federal officers, are exempt from South Carolina sales and use tax. Other sales of tangible personal property to Guard, however, will be taxable. (Decided under former law.) 1984 Op Atty Gen, No. 84‑96, p. 229 (August 9, 1984) 1984 WL 159903.

CATV Systems furnish the ways or means of transmitting communication as provided by Sections 12‑35‑140 and 12‑35‑150 and because of such, the gross proceeds derived therefrom are subject to the sales tax. (Decided under former law.) 1982 Op Atty Gen, No 82‑41, p 47 (June 9, 1982) 1982 WL 155010.

A manufacturer’s rebate to the retail customer does not affect the gross proceeds of sale or the sales price for purposes of sales or use taxes. (Decided under former law.) 1982 Op Atty Gen, No 82‑30, p 35 (May 5, 1982) 1982 WL 155000.

The sales tax is a tax imposed for the privilege of engaging or continuing within this State in the business of selling at retail any tangible personal property. (Decided under former law.) 1968‑69 Op Atty Gen, No 2681, p 106 (June 3, 1969) 1969 WL 10681.

There would be no constitutional inhibitions to the General Assembly that would prohibit the increase of the tax or the retrospective application thereof. (Decided under former law.) 1968‑69 Op Atty Gen, No 2681, p 106 (June 3, 1969) 1969 WL 10681.

Where the legislature has delegated its taxing authority to a county to the extent permitted by the Constitution, the county may levy a sales tax in addition to that levied by the State. (Decided under former law.) 1968‑69 Op Atty Gen, No 2672, p 95 (April 24, 1969) 1969 WL 10673.

The provisions of this section [former Code 1962 Section 65‑1436] are not applicable to an out‑of‑State manufacturer that exports property to South Carolina. 1968‑69 Op Atty Gen, No 2639, p 47 (February 19, 1969) 1969 WL 10642.

The word “import” connotes the presence of the manufacturer within South Carolina. (Decided under former law.) 1968‑69 Op Atty Gen, No 2639, p 47 (February 19, 1969) 1969 WL 10642.

A wholesaler cannot sell tangible personal property to the user or consumer thereof unless licensed as a retail merchant. (Decided under former law.) 1967‑68 Op Atty Gen, No 2422, p 77 (February 23, 1968) 1968 WL 8825.

A statute that exempts “all property and income” of a person from taxation does not exempt that person from the South Carolina sales and/or use tax because the same is not a tax on property or income. (Decided under former law.) 1966‑67 Op Atty Gen, No 2382, p 232 (December 22, 1967) 1967 WL 8690.

Where the purchaser defaults in a conditional sales contract and the seller acquires possession of the property and executes another contract with a third person for the balance due the seller in the initial contract, the subsequent transaction is taxable as a retail sale for sales and use tax purposes. (Decided under former law.) 1966‑67 Op Atty Gen, No 2375, p 224 (October 10, 1967) 1967 WL 8683.

Meals furnished underprivileged children by the Economic Opportunity Commission without charge are not the subject of the sales and/or use tax because there is no sale of the meal. (Decided under former law.) 1966‑67 Op Atty Gen, No 2277, p 91 (May 16, 1967) 1967 WL 8590.

The statutes contain no exemption for the sale of ingredients used to prepare meals furnished children by the Economic Opportunity Commission without charge and such ingredients are therefore within the gross proceeds of sales of the seller thereof and accordingly subject to the sales tax. (Decided under former law.) 1966‑67 Op Atty Gen, No 2277, p 91 (May 16, 1967) 1967 WL 8590.

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1. In general

Seller carries burden of paying sales tax, and in breach of contract action, buyer was entitled to offset for amount of sales tax charged by seller. (Decided under former law.) Southeastern Steel Co., Inc. v. Burton Block and Concrete Co., Inc. (S.C. 1979) 273 S.C. 634, 258 S.E.2d 888.

2. Constitutional issues

Sales tax on dry cleaning did not treat similarly situated dry cleaners differently, and thus did not violate equal protection. Ed Robinson Laundry and Dry Cleaning, Inc. v. South Carolina Dept. of Revenue (S.C. 2003) 356 S.C. 120, 588 S.E.2d 97, rehearing denied. Constitutional Law 3576; Taxation 3627

Framers of constitution left legislature free to change means of funding state schools to meet modern needs, and General Assembly chose valid means of providing for education in state through use of shared funding plans in South Carolina Education Finance Act and related laws. Acts in question are valid legislative enactments and do not contravene Article XI Section 3 of South Carolina Constitution on additional ground that when validity of legislative act is questioned, courts will presume legislative act to be constitutionally valid and every intendment will be indulged in favor of act’s validity. (Decided under former law.) Richland County v. Campbell (S.C. 1988) 294 S.C. 346, 364 S.E.2d 470.

Shared funding plan implemented by General Assembly is rational and constitutional means by which to equalize educational standards of public school system and educational opportunities of all students; argument was rejected that shared funding plan denied students equal educational opportunities because formula considered each school district’s wealth; South Carolina Education Finance Act provides for shared funding formula plan that takes into account individual wealth of each school district, but school districts which lack sufficient tax base receive proportionally more state funds and are required to pay proportionately less local revenue for public school operation. (Decided under former law.) Richland County v. Campbell (S.C. 1988) 294 S.C. 346, 364 S.E.2d 470.

The sales tax is an imposition upon the privilege of the business of selling at retail and measured by the amount of business done, which is a clear case of an excise tax to which the constitutional provisions relating to property taxes are irrelevant. (Decided under former law.) State ex rel. Roddey v. Byrnes (S.C. 1951) 219 S.C. 485, 66 S.E.2d 33.

This article does not violate SC Const, Art 1, Section 6, which provides that “all property subject to taxation shall be taxed in proportion to its value,” since that provision is inapplicable to license or excise taxes. (Decided under former law.) State ex rel. Roddey v. Byrnes (S.C. 1951) 219 S.C. 485, 66 S.E.2d 33. Licenses 7(7)

3. House sales

Where old houses were bought, restored, moved to a different lot, and then resold, the original owner of the houses was the retail seller who had the duty to collect and pay sales tax under Section 12‑35‑510. No sales tax could be levied on the person who restored and resold the houses. (Decided under former law.) Cox v. South Carolina Tax Com’n (S.C. 1985) 285 S.C. 224, 329 S.E.2d 739.

4. Leases

Assessment of sales tax pursuant to Section 12‑35‑510 upon sale of motor vehicles by Delaware corporation to South Carolina corporation does not place impermissible burden on interstate commerce in violation of Federal Constitution. (Decided under former law.) International Harvester Co. v. Wasson (S.C. 1984) 281 S.C. 458, 316 S.E.2d 378, certiorari denied 105 S.Ct. 250, 469 U.S. 882, 83 L.Ed.2d 188. Commerce 74.5(2)

The fact that a corporation is a wholly owned subsidiary, and does no business except the rental or lease of vehicles to the parent, does not preclude the imposition of a tax upon the wholly owned subsidiary on the proceeds of such rental. (Decided under former law.) Edisto Fleets, Inc. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 350, 182 S.E.2d 713.

Although the definition of the term “sale” as found in former Code 1962 Section 65‑1360 does not specifically refer to the lease or rental of tangible personal property, the same nonetheless is included because of the definition of the term “purchase” that is provided in former Code 1962 Section 65‑1357. Edisto Fleets, Inc. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 350, 182 S.E.2d 713.

Any person who leases or rents tangible personal property is expressly declared by former Code 1962 Section 65‑1359 to be a retailer and subject to taxation by this section [former Code 1962 Section 65‑1401]. Edisto Fleets, Inc. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 350, 182 S.E.2d 713.

5. Food service

A food service that sold meals to sponsor organizations that conducted federally supported summer lunch programs for indigent children was properly characterized as a retail seller by the tax commission and assessed for sales taxes where no sale was ever contemplated or was ever made by the sponsor organizations to either the children or the Department of Agriculture; accordingly, the last transaction for a consideration involved the food service as vendor and the organizations as vendees. (Decided under former law.) ARA Services, Inc. v. South Carolina Tax Commission (S.C. 1978) 271 S.C. 146, 246 S.E.2d 171, certiorari denied 99 S.Ct. 725, 439 U.S. 1048, 58 L.Ed.2d 707.

6. Hotel services

If hotel offered guests choice of accepting or rejecting breakfast and drinks, and billed separately for those items, it could avoid paying seven percent accommodations tax on those items and could merely pay five percent sales tax. Greystone Catering Co., Inc. v. South Carolina Dept. of Revenue and Taxation (S.C.App. 1997) 326 S.C. 551, 486 S.E.2d 7, rehearing denied. Innkeepers 4; Taxation 3642

Hotel operator that paid seven percent accommodations tax based on room rate could also be required to pay five percent sales tax on wholesale cost of food and beverages included as part of room; because food and beverages were not separately stated on guest’s bill, “last transaction” was removal of those items from inventory, and hotel was “final consumer.” Greystone Catering Co., Inc. v. South Carolina Dept. of Revenue and Taxation (S.C.App. 1997) 326 S.C. 551, 486 S.E.2d 7, rehearing denied. Taxation 3642

7. Lay away fees

Where a retail seller charged a lay away fee on all lay away sales which was not refundable and did not vary with the amount of the sale nor the time period of the lay away, and the seller retained the goods purchased until the full price was paid, the fee was obviously charged for the service rendered in making lay away sales and was therefore within the definition of “gross proceeds of sales” under Section 12‑35‑30, and thus subject to the sales tax imposed under Section 12‑35‑510. The fees charged were not exempt from the sales tax as finance charges within the meaning of South Carolina Tax Commission Regulation 117‑174.59, because no credit was advanced to the customer on a lay away sale but rather the sale was made on the condition that the customer could not obtain possession until the full purchase price was paid. (Decided under former law.) Meyers Arnold, Inc. v. South Carolina Tax Com’n (S.C.App. 1985) 285 S.C. 303, 328 S.E.2d 920.

8. Dry cleaners

Even assuming relevant class of similarly situated taxpayers included all service‑oriented businesses, and not just dry cleaners, State’s legitimate governmental interest in fostering economic development of dry cleaners and defraying cost of potential environmental harm from dry cleaning chemicals provided a rational basis for treating dry cleaners differently from other service‑oriented businesses, and thus, sales tax on dry cleaning did not violate equal protection, where dry cleaners were given a tax exemption for supplies and expensive start‑up costs for their machinery in return for payment of sales taxes on later‑earned receipts. Ed Robinson Laundry and Dry Cleaning, Inc. v. South Carolina Dept. of Revenue (S.C. 2003) 356 S.C. 120, 588 S.E.2d 97, rehearing denied. Constitutional Law 3576; Environmental Law 434; Taxation 3627

**SECTION 12‑36‑920.** Tax on accommodations for transients; reporting.

 (A) A sales tax equal to seven percent is imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration. This tax does not apply:

 (1) where the facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the individual’s place of abode; or

 (2) to gross proceeds from rental income wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g) as that code is defined in Section 12‑6‑40(A).

 The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of ninety continuous days are not considered proceeds from transients. The tax imposed by this subsection (A) does not apply to additional guest charges as defined in subsection (B) or separately stated optional charges on a bill to a customer for amenities, entertainment, special items in promotional tourist packages, and other guest services.

 (B) A sales tax of five percent is imposed on additional guest charges at any place where rooms, lodgings, or accommodations are furnished to transients for a consideration, unless otherwise taxed under this chapter. For purposes of this subsection, additional guest charges are limited to charges for:

 (1) room service;

 (2) laundering and dry cleaning services;

 (3) in‑room movies;

 (4) telephone service; and

 (5) rentals of meeting rooms.

 (C) Real estate agents, brokers, corporations, or listing services required to remit taxes under this section shall notify the department if rental property, previously listed by them, is dropped from their listings.

 (D) When any business is subject to the sales tax on accommodations and the business has more than one place of business in the State, the licensee shall report separately in his sales tax return the total gross proceeds derived from business done within and without the corporate limits of municipalities. A taxpayer who owns or manages rental units in more than one county or municipality shall report separately in his sales tax return the total gross proceeds from business done in each county or municipality.

 (E) The taxes imposed by this section are imposed on every person engaged or continuing within this State in the business of furnishing accommodations to transients for consideration.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1992 Act No. 361, Section 16(C); 1996 Act No. 458, Part II, Section 60B; 2004 Act No. 299, Section 4, eff July 1, 2004; 2005 Act No. 56, Section 2, eff May 9, 2005, applicable to taxable years beginning July 1, 2004; 2014 Act No. 172 (H.3561), Section 1, eff July 1, 2014; 2014 Act No. 259 (S.437), Section 3, eff June 9, 2014.

Code Commissioner’s Note

At the direction of the Code Commissioner, the amendments to subsection (A) made by 2014 Act No. 172, Section 1, eff. July 1, 2014, and 2014 Act No. 259, Section 3, eff June 9, 2014, were read together.

Effect of Amendment

2014 Act No. 172, Section 1, eff July 1, 2014, in subsection (A), last undesignated paragraph, added text at the end of the last sentence relating to separately stated optional charges; and rewrote subsection (B).

2014 Act No. 259, Section 3, eff June 9, 2014, in subsection (A), split up the subsection by adding paragraph designator (1) and setting out the last undesignated paragraph, and added subsection (A)(2), relating to gross proceeds from rental income wholly excluded from gross income.

CROSS REFERENCES

Application of this section to bed and breakfast facilities, see Section 45‑4‑90.

“Beach preservation fee” defined, see Section 6‑1‑620.

Fairness in Lodging Act, short title, findings, see Section 6‑1‑810.

Sales and use tax regulations, hotels, motels, and similar facilities, see S.C. Code of Regulations R. 117‑307.

Sales and use tax regulations, meals, see S.C. Code of Regulations R. 117‑305.

Owner of rental units in more than one county or municipality to report separately in tax return total gross proceeds from each county or municipality, see Section 4‑10‑350.

Use of revenue from local accommodations tax, see Section 6‑1‑530.

Use of revenue from local hospitality tax, see Section 6‑1‑730.

Library References

Innkeepers 4.

Westlaw Topic No. 213.

C.J.S. Inns, Hotels, and Eating Places Sections 14 to 16.

RESEARCH REFERENCES

ALR Library

61 ALR 6th 387 , Obligation of Online Travel Companies to Collect and Remit Hotel Occupancy Taxes.

Encyclopedias

S.C. Jur. Blue Laws Section 14, Certain Counties Exempt.

S.C. Jur. Hotels, Motels and Other Lodgings Section 20, Taxes.

S.C. Jur. Hotels, Motels and Other Lodgings Section 26, Taxes.

Attorney General’s Opinions

Whether the Lodging Establishment Act of the Residential Landlord Tenant Act would apply to guests of hotels, motels or other lodging who rent by the month would require a determination of whether such individuals are considered transients. 1994 Op Atty Gen, No. 94‑44, p. 100 (July 26, 1994) 1994 WL 444278.

NOTES OF DECISIONS

In general 1

Business of furnishing accommodations 3

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1. In general

“Gross proceeds,” for purposes of hotel room tax statute, includes the value obtained from the rental of accommodations without deduction for the cost of services. Travelscape, LLC v. South Carolina Dept. of Revenue (S.C. 2011) 391 S.C. 89, 705 S.E.2d 28. Innkeepers 4

Service and facilitation fees which online travel agency retained for its services in booking hotels in South Carolina were subject to sales taxation as the “gross proceeds derived from the rental or charges for any rooms.” Travelscape, LLC v. South Carolina Dept. of Revenue (S.C. 2011) 391 S.C. 89, 705 S.E.2d 28. Innkeepers 4

2. Constitutional issues

Accommodations tax imposed on online travel agency which provided reservation services for hotels in South Carolina was both internally and externally consistent, as required by the dormant Commerce Clause; accommodation tax imposed tax on the gross proceeds derived from furnishing accommodations in South Carolina, and if every state imposed a similar tax on accommodations provided within its boundaries, no multiple taxation would occur because the same accommodations could not be furnished in two different states at one time. Travelscape, LLC v. South Carolina Dept. of Revenue (S.C. 2011) 391 S.C. 89, 705 S.E.2d 28. Commerce 63.10; Innkeepers 4

Nevada online travel agency had a sufficient physical presence in South Carolina for purposes of satisfying the dormant Commerce Clause’s substantial nexus requirement in connection with the imposition of the South Carolina Accommodations Tax on travel agency; travel agency’s employees and representatives visited South Carolina in order to enable travel agency to establish and maintain hotel relationships and obtain the discounted net room rate for rooms booked using travel agency’s website, and physical services provided by booked hotels were significantly associated with travel agency’s ability to establish and maintain a market in South Carolina for its sales. Travelscape, LLC v. South Carolina Dept. of Revenue (S.C. 2011) 391 S.C. 89, 705 S.E.2d 28. Commerce 63.10; Innkeepers 4

3. Business of furnishing accommodations

Online travel agency which facilitated hotel bookings in South Carolina was engaged “in the business of” furnishing accommodations to transients for consideration and thus was subject to the Accommodations Tax, even though it did not physically provide sleeping accommodations. S.C.Ann. Travelscape, LLC v. South Carolina Dept. of Revenue (S.C. 2011) 391 S.C. 89, 705 S.E.2d 28. Innkeepers 4

Nevada online travel agency was engaged in the business of furnishing accommodations in South Carolina and thus was subject to the Accommodations Tax, where agency entered into contracts with hundreds of hotels in South Carolina in which the hotels agreed to accept a discounted price, or net rate, for reservations made online, sent employees to South Carolina for the purpose of negotiating such agreements, and booked reservations in exchange for consideration at hotels located in South Carolina. Travelscape, LLC v. South Carolina Dept. of Revenue (S.C. 2011) 391 S.C. 89, 705 S.E.2d 28. Innkeepers 4

4. Food and beverages

Hotel operator that paid seven percent accommodations tax based on room rate could also be required to pay five percent sales tax on wholesale cost of food and beverages included as part of room; because food and beverages were not separately stated on guest’s bill, “last transaction” was removal of those items from inventory, and hotel was “final consumer.” Greystone Catering Co., Inc. v. South Carolina Dept. of Revenue and Taxation (S.C.App. 1997) 326 S.C. 551, 486 S.E.2d 7, rehearing denied. Taxation 3642

If hotel offered guests choice of accepting or rejecting breakfast and drinks, and billed separately for those items, it could avoid paying seven percent accommodations tax on those items and could merely pay five percent sales tax. Greystone Catering Co., Inc. v. South Carolina Dept. of Revenue and Taxation (S.C.App. 1997) 326 S.C. 551, 486 S.E.2d 7, rehearing denied. Innkeepers 4; Taxation 3642

5. Local regulation

Assuming the imposition of local sales and use taxes is a function, the responsibility for which rests with the State government or which requires statewide conformity, a county ordinance assessing a tax upon transient accommodations did not “set aside” the structure or administration of this function since the ordinance did not conflict with any State tax statute, nor did the ordinance attempt to circumvent any of the requirements of these statutes. Hospitality Ass’n of South Carolina, Inc. v. County of Charleston (S.C. 1995) 320 S.C. 219, 464 S.E.2d 113. Innkeepers 2

6. Review

Online travel agency failed to preserve for appellate review argument that South Carolina Accommodations Tax discriminated against interstate commerce in violation of the dormant Commerce Clause because it was not imposed the tax on travel agents located in South Carolina and was not fairly related to the services provided by the state, as Administrative Law Court did not rule on arguments relating to those contentions and travel agency failed to file a timely motion to alter or amend the judgment. Travelscape, LLC v. South Carolina Dept. of Revenue (S.C. 2011) 391 S.C. 89, 705 S.E.2d 28. Innkeepers 4

Online travel agency failed to preserve for appellate review contention that state violated travel agency’s equal protection rights by failing to impose accommodations tax on non‑Internet travel related companies engaged in the same business, as Administrative Law Court never ruled on that argument. Travelscape, LLC v. South Carolina Dept. of Revenue (S.C. 2011) 391 S.C. 89, 705 S.E.2d 28. Innkeepers 4

**SECTION 12‑36‑930.** Sale of motor vehicle to resident of another state.

 (A) The tax imposed by this article on sales of motor vehicles, as defined in Section 56‑1‑10, trailers, semitrailers, or pole trailers of a type to be registered and licensed, to a resident of another state, is the lesser of:

 (1) an amount equal to the sales tax, which would be imposed in the purchasers state of residence; or

 (2) the tax that would be imposed under this chapter.

 (B) At the time of the sale, the seller shall:

 (1) obtain from the purchaser a notarized statement of the purchasers intent to license the vehicle, within ten days, in the purchasers state of residence; and

 (2) retain a signed copy of the notarized statement. The purchaser shall give a copy to the sales tax agency of the purchasers state of residence.

 (C) No tax is due if a nonresident will not receive credit in his state of residence for sales tax paid to this State under this section.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1992 Act No. 361, Section 16(D).

Library References

Taxation 3650.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2173.

**SECTION 12‑36‑940.** Amounts that may be added to sales price because of tax.

 (A) Each retailer may add to the sales price as a result of the five percent state sales tax:

 (1) no amount on sales of ten cents or less;

 (2) one cent on sales of eleven through twenty cents;

 (3) two cents on sales of twenty‑one through forty cents;

 (4) three cents on sales of forty‑one through sixty cents;

 (5) four cents on sales of sixty‑one through eighty cents;

 (6) five cents on sales of eighty‑one cents through one dollar;

 (7) one cent additional for each twenty cents or major fraction of it over one dollar.

 (B) The inability, impracticability, refusal, or failure to add these amounts to the sales price and collect them from the purchaser does not relieve the taxpayer from the tax levied by this article.

 (C) For purposes of the state sales tax on accommodations and applicable combined state sales and local tax for counties imposing a local sales tax collected by the department on their behalf, retailers may add to the sales price an amount equal to the total state and local sales tax rate times the sales price. The amount added to the sales price may not be less than the amount added pursuant to subsection (A). In calculating the tax due, retailers may round a fraction of more than one‑half of a cent to the next whole cent and a fraction of a cent of one‑half or less must be eliminated. The inability, impracticability, refusal, or failure to add the tax to the sales price as allowed by this subsection and collect them from the purchaser does not relieve the taxpayer of his responsibility to pay tax.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 2001 Act No. 89, Section 27, eff July 20, 2001.

Library References

Taxation 3707.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2213.

Attorney General’s Opinions

A manufacturer’s rebate to the retail customer does not effect the gross proceeds of sale or the sales price for purposes of sales or use taxes. (Decided under former law.) 1982 Op Atty Gen, No 82‑30, p 35 (May 5, 1982) 1982 WL 155000.

The sales tax is a tax imposed for the privilege of engaging or continuing within this State in the business of selling at retail any tangible personal property. (Decided under former law.) 1968‑69 Op Atty Gen, No 2681, p 106 (June 3, 1969) 1969 WL 10681.

There would be no constitutional inhibitions to the General Assembly that would prohibit the increase of the tax or the retrospective application thereof. (Decided under former law.) 1968‑69 Op Atty Gen, No 2681, p 106 (June 3, 1969) 1969 WL 10681.

The South Carolina sales tax is a vendor tax, the legal incident of which falls upon the retailer, and because of such, there is no constitutional issue of the immunity of the U.S. Government, its agencies and/or instrumentalities. The use tax, however, being complementary to the sales tax, is imposed directly upon the user or consumer of the property, and because of such, the legal incident of such taxes would be upon the U.S. Government, its agencies and/or instrumentalities and their immunity from State taxation would, therefore, preclude the imposition and collection of this tax. (Decided under former law.) 1967‑68 Op Atty Gen, No 2472, p 140 (July 2, 1968) 1968 WL 8870.

**SECTION 12‑36‑950.** Presumption as to gross proceeds; burden of proof; resale certificate.

 It is presumed that all gross proceeds are subject to the tax until the contrary is established. The burden of proof that the sale of tangible personal property is not a sale at retail is on the seller.

 However, if the seller receives a resale certificate signed by the purchaser stating that the property is purchased for resale, the liability for the sales tax shifts from the seller to the purchaser.

 The resale certificate must include the purchaser’s name, address, retail sales tax license number, and any other provisions or information considered necessary by the department.

 The department may require the seller to provide information it considers necessary for the administration of this section.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1991 Act No. 109, Section 9.

CROSS REFERENCES

Dual party relay charge collections, see Section 58‑9‑2535.

Universal Service Fund, sum determination, contribution remittances and collections, fee retentions, distributions, see Section 58‑9‑280.

Library References

Taxation 3692.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2194 to 2196.

LAW REVIEW AND JOURNAL COMMENTARIES

State Sales Tax: Lease and Rental of Tangible Personal Property. 24 S.C. L. Rev. 656.

ARTICLE 11

Additional Sales, Use, and Casual Excise Tax

**SECTION 12‑36‑1110.** Additional sales, use and casual excise tax imposed on certain items; exceptions.

 Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12‑36‑920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12‑36‑2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

HISTORY: 2006 Act No. 388, Pt I, Section 1.A, eff June 10, 2006.

Editor’s Note

2006 Act No. 388, Pt I, Section l.C, provides as follows:

“The provisions of Section 4‑10‑350(F) and (G) of the 1976 Code apply mutatis mutandis with respect to the tax imposed pursuant to Article 11, Chapter 36, Title 12 of the 1976 Code as added by this section.”

2006 Act No. 388, Pt I Section 4.D, provides as follows:

“The imposition of the sales, use, and casual excise taxes imposed pursuant to Chapter 36 of Title 12 of the 1976 Code, the South Carolina Sales and Use Tax Act, is suspended with respect to otherwise taxable events occurring on November 24 and 25, 2006. The suspension provided pursuant to this paragraph does not apply to the sales tax on accommodations and other charges imposed pursuant to Section 12‑36‑920 of the 1976 Code, nor does the suspension apply to any local sales or use tax administered by the South Carolina Department of Revenue.”

Library References

Taxation 3636 to 3658.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2166 to 2176.

**SECTION 12‑36‑1120.** Revenue of taxes credited to Homestead Exemption Fund.

 The revenue of the taxes imposed by this article must be credited to the Homestead Exemption Fund established pursuant to Section 11‑11‑155.

HISTORY: 2006 Act No. 388, Pt I, Section 1.A, eff June 10, 2006.

Library References

Taxation 3713.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2222.

**SECTION 12‑36‑1130.** Prescribing amounts added to sales price to reflect additional taxes.

 The Department of Revenue may prescribe amounts that may be added to the sales price to reflect the additional taxes imposed pursuant to this article.

HISTORY: 2006 Act No. 388, Pt I, Section 1.A, eff June 10, 2006.

Library References

Taxation 3673.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2186 to 2188.

ARTICLE 13

Use Tax

**SECTION 12‑36‑1310.** Imposition of tax; rate; applicability; credit for tax paid in another state.

 (A) A use 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 the property, regardless of whether the retailer is or is not engaged in business in this State.

 (B) The use tax imposed by this article also applies to the:

 (1) gross proceeds accruing or proceeding from the business of providing or furnishing a laundering, dry cleaning, dyeing, or pressing service, but does not apply to the gross proceeds derived from coin operated laundromats and dry cleaning machines;

 (2) gross proceeds accruing or proceeding from the sale of electricity;

 (3)(a) gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages. Gross proceeds from the sale of prepaid wireless calling arrangements subject to tax at retail pursuant to item (5) of this subsection are not subject to tax pursuant to this item. Effective for bills rendered after August 1, 2002, charges for mobile telecommunications services subject to the tax under this item must be sourced in accordance with the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code. The term “charges for mobile telecommunications services” is defined for purposes of this section the same as it is defined in the Mobile Telecommunications Sourcing Act. All definitions and provisions of the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code are adopted. Telecommunications services are sourced in accordance with Section 12‑36‑1920;

 (b)(i) For purposes of this item, a “bundled transaction” means a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for tax purposes;

 (ii) For bills rendered on or after January 1, 2004, that include telecommunications services in a bundled transaction, if the nonitemized price is attributable to properties or services that are taxable and nontaxable, the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes;

 (4) fair market value of tangible personal property brought into this State, by the manufacturer thereof, for storage, use, or consumption in this State by the manufacturer;

 (5) gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements;

 (a) “Prepaid wireless calling arrangements” means communication services that:

 (i) are used exclusively to purchase wireless telecommunications;

 (ii) are purchased in advance;

 (iii) allow the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and

 (iv) are sold in units or dollars which decline with use in a known amount.

 (b) All charges for prepaid wireless calling arrangements must be sourced to the:

 (i) location in this State where the over‑the‑counter sale took place;

 (ii) shipping address if the sale did not take place at the seller’s location and an item is shipped; or

 (iii) either the billing address or location associated with the mobile telephone number if the sale did not take place at the seller’s location and no item is shipped.

 (C) When a taxpayer is liable for the use tax imposed by this section on tangible personal property purchased in another state, upon which a sales or use tax was due and paid in the other state, the amount of the sales or use tax due and paid in the other state is allowed as a credit against the use tax due this State, upon proof that the sales or use tax was due and paid in the other state. If the amount of the sales or use 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 department.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 2001 Act No. 89, Section 28, eff July 20, 2001; 2002 Act No. 334, Section 12, eff June 24, 2002; 2003 Act No. 69, Section 3.W.1, eff June 18, 2003; 2005 Act No. 145, Section 28, eff June 7, 2005; 2005 Act No. 161, Section 19.C, eff October 1, 2005; 2005 Act No. 161, Sections 30.C and 30.D, eff September 1, 2005; 2011 Act No. 32, Section 2.C, eff September 1, 2011.

Editor’s Note

2003 Act No. 69, Section 3.W.2, provides as follows:

“2. This subsection takes effect upon approval by the Governor and applies to the purchase of subject tangible personal property made on or after that date.”

2011 Act No. 32, Section 2.E., provides as follows:

“Notwithstanding the general effective date provided in this act, the provisions of this section take effect on the first day of the third month beginning after the date of approval of this act.”

CROSS REFERENCES

Communications services, see S.C. Code of Regulations R. 117‑329.

Laundry, launderette, cleaning, dyeing or pressing establishments, see S.C. Code of Regulations R. 117‑303.

Library References

Taxation 3639.

Westlaw Topic No. 371.

LAW REVIEW AND JOURNAL COMMENTARIES

Remote seller sales and use tax law: How proposed law will impact South Carolina. James Bull Sterling, 65 S.C. L. Rev. 827 (Summer 2014).

United States Supreme Court Annotations

Sales and Use, fuel sales tax exemption for railroad’s competitors would not violate statutory protection against discrimination if another tax on competitors was roughly equivalent, see Alabama Dept. of Revenue v. CSX Transp., Inc., 2015, 135 S.Ct. 1136, 191 L.Ed.2d 113. Taxation 2245

State sales or use tax as violating equal protection clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 86 L Ed 2d 735.

Attorney General’s Opinions

The South Carolina sales tax is a vendor tax, the legal incident of which falls upon the retailer, and because of such, there is no constitutional issue of the immunity of the U.S. Government, its agencies and/or instrumentalities. The use tax, however, being complementary to the sales tax, is imposed directly upon the user or consumer of the property, and because of such, the legal incident of such taxes would be upon the U.S. Government, its agencies and/or instrumentalities and their immunity from State taxation would, therefore, preclude the imposition and collection of this tax. (Decided under former law.) 1967‑68 Op Atty Gen, No 2472, p 140 (July 2, 1968) 1968 WL 8870.

A statute that exempts “all property and income” of a person from taxation does not exempt that person from the South Carolina sales and/or use tax because the same is not a tax on property or income. (Decided under former law.) 1966‑67 Op Atty Gen, No 2382, p 232 (December 22, 1967) 1967 WL 8690.

If an automobile is purchased without the boundaries of South Carolina for use in South Carolina a use tax is imposed on the same, such tax being computed on the purchase price of the automobile. The tax is imposed without regard to whether a sales tax is paid to the state wherein the automobile is purchased. (Decided under former law.) 1966‑67 Op Atty Gen, No 2301, p 120 (July 27, 1967) 1967 WL 8611.

A person is engaged in the business or continuing in the business of selling tangible personal property at retail when sales with regularity are made over an extended period of time. (Decided under former law.) 1965‑66 Op Atty Gen, No 1979, p 29 (February 18, 1966) 1966 WL 8460.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Premium merchandise 3

1. In general

A trucking company was subject to a use tax imposed by Section 12‑35‑810 on the out‑of‑state purchase of 50 trailers, where the trailers were “used” in South Carolina within the meaning of Section 12‑35‑160 in that the company transported the trailers to a particular location within the state, made alterations and changes to them, put them into service in South Carolina, and registered them within the state for property tax purposes, where the trailers were “stored” within the state within the meaning of Section 12‑35‑130 for a period of approximately two to three weeks before they were dispatched to pick up their first load of freight, and where the sale of the trailers was a retail sale within the meaning of Section 12‑35‑110 in that it was not a wholesale sale as defined by Section 12‑35‑170, but, rather, a sale to the ultimate user and consumer of the trailers. (Decided under former statute.) Senn Trucking Co. v. Wasson (S.C. 1984) 280 S.C. 279, 312 S.E.2d 252, certiorari denied 104 S.Ct. 3537, 467 U.S. 1252, 82 L.Ed.2d 841.

This article levies a use tax which is manifestly for the purpose of preventing evasion by purchases at retail from without the State or under other circumstances which might or would avoid application of the retail sales tax. The use tax thus complements the sales tax. (Decided under former statute.) State ex rel. Roddey v. Byrnes (S.C. 1951) 219 S.C. 485, 66 S.E.2d 33.

While the use tax is complementary to the sales tax it is by no means essential to the validity of it. If the terms of this chapter relating to the use tax were eliminated, the chapter would remain complete, capable of being executed independently of the use tax provisions and without doing undue violence to the legislative intent. (Decided under former law.) State ex rel. Roddey v. Byrnes (S.C. 1951) 219 S.C. 485, 66 S.E.2d 33.

2. Constitutional issues

Interstate rail carrier’s competitors, consisting of both motor carriers and water carriers, made up appropriate comparison class for determining whether Alabama’s tax scheme discriminated against rail carrier in violation of Railroad Revitalization and Regulatory Reform Act by exempting motor and water carriers from sales and use taxes on purchase and consumption of diesel fuel, since any discrimination in favor of motor and water carriers most obviously frustrated Act’s goal of restoring financial stability of railway system. Alabama Dept. of Revenue v. CSX Transp., Inc., 2015, 135 S.Ct. 1136, 191 L.Ed.2d 113. Taxation 3628

Alabama’s fuel‑excise tax could not justify exemption of interstate water carriers, but not rail carriers, from sales and use taxes on purchase and consumption of diesel fuel under Railroad Revitalization and Regulatory Reform Act, where only motor carriers, not water carriers, paid fuel‑excise tax. Alabama Dept. of Revenue v. CSX Transp., Inc., 2015, 135 S.Ct. 1136, 191 L.Ed.2d 113. Taxation 3628

State special use tax assessed against publications for cost of ink and paper used in producing publications violates First Amendment. Minneapolis Star and Tribune Co. v. Minnesota Com’r of Revenue, U.S.Minn.1983, 103 S.Ct. 1365, 460 U.S. 575, 75 L.Ed.2d 295.

This article does not violate SC Const, Art 1, Section 5, or the commerce clause, Art 1, Section 8, of the United States Constitution. (Decided under former law.) State ex rel. Roddey v. Byrnes (S.C. 1951) 219 S.C. 485, 66 S.E.2d 33.

3. Premium merchandise

Where premium merchandise itself is not transferred to the customers in connection with the sale or sales of regular merchandise, but to the contrary, it is used by the store as part and parcel of a business promotion scheme, the use tax paid thereon is properly paid and collected. (Decided under former statute.) Colonial Stores, Inc. v. South Carolina Tax Commission (S.C. 1969) 253 S.C. 14, 168 S.E.2d 774.

Imposition of use tax on premium merchandise in instant case did not result in double taxation. (Decided under former law.) Colonial Stores, Inc. v. South Carolina Tax Commission (S.C. 1969) 253 S.C. 14, 168 S.E.2d 774.

**SECTION 12‑36‑1320.** Tax on transient construction property.

 (A) A use tax at the rate of five percent is imposed on the storage, use, or other consumption in this State of transient construction property, as defined by Section 12‑36‑150.

 (B) The owner, or if the property is leased, the lessee, of transient construction property is liable for the use tax.

 (C) The tax is computed as follows:

 (1) divide the length of time the property will be used in this State by the total useful life of the property;

 (2) multiply the result from item (1) by the sales price of the property;

 (3) multiply the amount in item (2) by five percent. The result of the computation is the tax due.

 The useful life of transient construction property must be determined by the department in accordance with the experience and practices of the building and construction trade. In the absence of satisfactory evidence as to the period of use intended in this State, it is presumed that the property will remain in this State for the remainder of its useful life.

 (D) A prorated amount of the sales and use tax legally due and paid to another state on transient construction property is allowed as a credit, but only if the other state grants substantially similar tax credits on the property purchased in South Carolina. The prorated tax credit is computed as follows:

 (1) divide the length of time the property was used in the other state by the total useful life of the property;

 (2) multiply the result from item (1) by the state sales tax legally due and paid the other state;

 (3) the lesser of the result from item (2) or the tax computed in subsection (C) is the prorated credit amount.

 (E) If the state in which the property was previously used does not prorate its use tax on, or depreciate the value for use tax purposes of, transient construction property used by South Carolina contractors operating in that state, the use tax, at five percent of the sales price, applies.

 (F) Transient construction property purchased and substantially used in another state is not subject to the use tax if the owner of the property uses it to construct or repair his own buildings, structures, or other property located in this State.

 (G) The use, storage, or consumption of the property, when purchased for use in this State, is subject to the full amount of use tax provided in Section 12‑36‑1310(A), regardless of the period of intended use in this State.

 (H) The tax is due immediately upon transient construction property being brought into this State.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3650, 3672.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2186 to 2187.

United States Supreme Court Annotations

State sales or use tax as violating equal protection clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 86 L Ed 2d 735.

**SECTION 12‑36‑1330.** Tax on storage, use, or consumption of tangible personal property.

 (A) Every person storing, using, or otherwise consuming in this State tangible personal property purchased at retail, is liable for the use tax, until the tax is paid to the State.

 (B) A receipt from a retailer:

 (1) maintaining a place of business in this State; or

 (2) authorized by the department to collect the use tax, is sufficient to relieve the purchaser from further liability for tax to which the receipt refers.

 (C) For the purposes of this chapter, a retailer authorized by the department to collect the use tax is regarded as a retailer maintaining a place of business in this State.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3650.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2173.

NOTES OF DECISIONS

In general 1

1. In general

Double taxation is avoided by provisions in former Code 1962 Sections 65‑1422 and 65‑1425 that the user shall be relieved of liability for the use tax on property subject to the sales tax and on which the tax has been paid, or when the retailer has given the purchaser a receipt. McJunkin Corp. v. City of Orangeburg (C.A.4 (S.C.) 1956) 238 F.2d 528.

**SECTION 12‑36‑1340.** Collection of tax by retailer sellers.

 Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

 (1) maintains a place of business;

 (2) qualifies to do business;

 (3) solicits and receives purchases or orders by an agent or salesman; or

 (4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1998 Act No. 432, Section 11.

Library References

Taxation 3706.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2213 to 2215.

United States Supreme Court Annotations

State sales or use tax as violating equal protection clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 86 L Ed 2d 735.

Validity of provision in tax statute requiring one person to collect tax imposed upon another. 4 L Ed 2d 1974.

**SECTION 12‑36‑1350.** Time of collection of tax by retail seller; refunding or absorption of tax by seller prohibited; tax collected constitutes debt to state.

 (A) Every seller making sales of tangible personal property for storage, use, or other consumption in this State, not otherwise exempted, shall at the time of making the sales or, if the storage, use, or consumption is not then taxable, at the time the storage, use, or other consumption is taxable, collect the use tax from the purchaser and give to the purchaser a receipt showing the amount subject to the tax and the amount of tax collected.

 (B) The seller shall not advertise or state, in any manner, that the use tax, or any part of it:

 (1) will be assumed or absorbed by the seller;

 (2) will not be added to the selling price; or

 (3) will be refunded.

 (C) The tax required in this article to be collected by the seller constitutes a debt owed by the seller to this State.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3700, 3706.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2208, 2213 to 2215.

United States Supreme Court Annotations

State sales or use tax as violating equal protection clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 86 L Ed 2d 735.

Validity of provision in tax statute requiring one person to collect tax imposed upon another. 4 L Ed 2d 1974.

Attorney General’s Opinions

Retail sale of tangible personal property is not subject to local option sales tax when seller located within county that imposes tax is required to deliver property to purchaser outside that county. 1991 Op Atty Gen No 91‑47, p 121 (July 30, 1991) 1991 WL 474777.

NOTES OF DECISIONS

In general 1

1. In general

This section [former Code 1962 Section 65‑1426] has relation to the sales tax only and not to the use tax. McJunkin Corp. v. City of Orangeburg (C.A.4 (S.C.) 1956) 238 F.2d 528.

City may require bidders to include use tax in their bid prices. There is no illegality or impropriety in a city requiring its bidders on supplying it with pipe to include the use tax as well as other taxes in their bid prices, and this section [former Code 1962 Section 65‑1426] is inapplicable to the situation. McJunkin Corp. v. City of Orangeburg (C.A.4 (S.C.) 1956) 238 F.2d 528.

The debt to the State arises upon each sale and the deferment of the time of payment until the 20th day of the next month is merely a grace period for payment. (Decided under former statute.) Stephens v. Hendricks (S.C. 1955) 228 S.C. 458, 90 S.E.2d 632.

**SECTION 12‑36‑1360.** Filing use tax return; payment of tax directly to State.

 Every person liable for the use tax under Section 12‑36‑1330(A) who has not paid the tax due to a seller required or authorized to collect the tax, must file a return and remit the tax to the State, in accordance with this chapter.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3688, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2206.

**SECTION 12‑36‑1370.** Presumption of applicability of tax.

 (A) It is 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 seller takes from the purchaser a certificate, signed by and bearing the name and address of the purchaser, to the effect that the purchase was for resale.

 (B) It is also presumed that tangible personal property received in this State by its purchaser was purchased for storage, use, or other consumption in this State.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1993 Act No. 181, Section 196.

Library References

Taxation 3692.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2194 to 2196.

ARTICLE 17

Casual Excise Tax

**SECTION 12‑36‑1710.** Excise tax on casual sales of motor vehicles, motorcycles, boats, motors, and airplanes; exclusions; payment of tax as prerequisite to titling, licensing, or registration.

 (A) In addition to all other fees prescribed by law there is imposed an excise tax for the issuance of every certificate of title, or other proof of ownership, for every boat, motor, or airplane, required to be registered, titled, or licensed. The tax is five percent of the fair market value of the airplane, boat, and motor.

 (B) Excluded from the tax are:

 (1) boats, motors, or airplanes:

 (a) transferred to members of the immediate family;

 (b) transferred to a legal heir, legatee, or distributee;

 (c) transferred from an individual to a partnership upon formation of a partnership, or from a stockholder to a corporation upon formation of a corporation;

 (d) transferred to a licensed motor vehicle or motorcycle dealer for the purpose of resale;

 (e) transferred to a financial institution for the purpose of resale;

 (f) transferred as a result of repossession to any other secured party, for the purpose of resale;

 (2) the fair market value of a boat, motor, or airplane, transferred to the seller or secured party in partial payment;

 (3) gross proceeds of transfers of airplanes specifically exempted by Section 12‑36‑2120 from the sales or use tax;

 (4) boats, motors, or airplanes, where a sales or use tax has been paid on the transaction necessitating the transfer.

 (C) “Fair market value” means the total purchase price less any trade‑in, or the valuation shown in a national publication of used values adopted by the department, less any trade‑in.

 (D) “Total purchase price” means the price of a boat, motor, or airplane agreed upon by the buyer and seller with an allowance for a trade‑in, if applicable.

 (E) “Immediate family” means spouse, parents, children, sisters, brothers, grandparents, and grandchildren.

 (F) The department shall require every applicant for a certificate of title to supply information it considers necessary as to the time of purchase, the purchase price, and other information relative to the determination of fair market value. If the excise tax is based upon total purchase price as defined in this section, the department shall require a submission of a bill of sale and the signature of the owner subject to the perjury statutes of this State.

 (G) The Department of Motor Vehicles and the Division of Aeronautics of the Department of Commerce may not issue a license or transfer of title without first procuring from the Department of Revenue information showing that the excise tax has been collected. The Department of Natural Resources may not license any boat or register any motor without first procuring from the Department of Revenue information showing that the excise tax has been collected.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1993 Act No. 181, Section 197; 1994 Act No. 497, Part II, Section 121C; 1996 Act No. 431, Section 7; 1996 Act No. 459, Section 10; 2017 Act No. 40 (H.3516), Section 7.C, eff July 1, 2017.

Effect of Amendment

2017 Act No. 40, Section 7.C, in (A), (B), and (D), deleted “motor vehicle, motorcycle,” in seven places.

Library References

Taxation 3678.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177.

Attorney General’s Opinions

The casual excise tax is not applicable to the documentation and registry issued by the United States Customs Office. (Decided under former law.) 1983 Op Atty Gen, No. 83‑33, p 51 (July 8, 1983) 1983 WL 142704.

**SECTION 12‑36‑1720.** Application of tax.

 The excise tax applies only to the last sale before the application for title.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3678.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177.

**SECTION 12‑36‑1730.** Wilful avoidance of tax; penalty.

 A person who wilfully or knowingly makes a false statement for the purpose of avoiding all or a part of the casual excise tax imposed by this article or who assists another person to avoid all or a part of the casual excise tax levied by this article is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than two hundred dollars or imprisoned not more than thirty days, or both. Offenses under this section are triable in magistrate’s court.

HISTORY: 1992 Act No. 361, Section 16(K).

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑36‑1740.** Penalty for failure to pay casual excise tax.

 A person liable for the casual excise tax provided by this article who fails to pay the tax or comply with a lawful regulation of the department is liable for a penalty not to exceed five hundred dollars.

HISTORY: 1992 Act No. 361, Section 16(K).

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

ARTICLE 19

Telecommunications Sourcing

**SECTION 12‑36‑1910.** Definitions.

 For purposes of this article:

 (1) “Air‑to‑ground radiotelephone service” means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

 (2) “Call‑by‑call basis” means any method of charging for telecommunications services in which the price is measured by individual calls.

 (3) “Communications channel” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

 (4) “Customer” means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this provision applies only for the purpose of sourcing sales of telecommunications services pursuant to Section 12‑36‑1920. “Customer” does not include a reseller of telecommunications service or a mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider’s licensed service area.

 (5) “Customer channel termination point” means the location where the customer either inputs or receives the communications.

 (6) “End user” means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

 (7) “Home service provider” means the same as that term is defined in Section 124(5) of Public Law 106‑252 (Mobile Telecommunications Sourcing Act).

 (8) “Mobile telecommunications service” means the same as that term is defined in Section 124(7) of Public Law 106‑252 (Mobile Telecommunications Sourcing Act).

 (9) “Place of primary use” means the street address representative of the customer’s primary use of the telecommunications service, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, “place of primary use” must be within the licensed service area of the home service provider.

 (10) ‘Post‑paid calling service” means the telecommunications service obtained by making a payment on a call‑by‑call basis either through the use of a credit card or payment mechanism like a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications. A post‑paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunication service.

 (11) “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars, of which the number declines with use in a known amount.

 (12) “Private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and other associated services provided in connection with the use of the channel or channels.

 (13) “Service address” means:

 (a) the location of the telecommunications equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

 (b) if the location in item (a) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller’s telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller;

 (c) if the location in item (a) and item (b) is not known, the service address means the location of the customer’s place of primary use.

HISTORY: 2005 Act No. 161, Section 30.A, eff on the first full calendar day of the third month after approval (became law without the Governor’s signature on June 9, 2005).

**SECTION 12‑36‑1920.** Sourcing of sale of telecommunications services.

 For the purposes of telecommunications sourcing:

 (1) Except for the defined telecommunication services in item (3), the sale of telecommunication service sold on a call‑by‑call basis must be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

 (2) Except for the defined telecommunication services in item (3), a sale of telecommunications services on a basis other than a call‑by‑call basis, is sourced to the customer’s place of primary use.

 (3) The sale of the following telecommunication services must be sourced to each level of taxing jurisdiction:

 (a) A sale of mobile telecommunications services, other than air‑to‑ ground radiotelephone service and prepaid calling service, is sourced to the customer’s place of primary use as required by the Mobile Telecommunications Sourcing Act.

 (b) A sale of post‑paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller’s telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

 (c) A sale of a private communication service is sourced as follows:

 (i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

 (ii) Service in which all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

 (iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and the segments of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

 (iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and the segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

HISTORY: 2005 Act No. 161, Section 30.A, eff on the first full calendar day of the third month after approval (became law without the Governor’s signature on June 9, 2005).

Library References

Taxation 3658.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2170.

**SECTION 12‑36‑1930.** Application of article.

 Notwithstanding another provision of law, this article applies to local sales and use taxes on telecommunication services collected and administered by the Department of Revenue on behalf of the local jurisdictions.

HISTORY: 2005 Act No. 161, Section 30.A, eff on the first full calendar day of the third month after approval (became law without the Governor’s signature on June 9, 2005).

Library References

Taxation 3658.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2170.

ARTICLE 21

Maximum Tax and Exemptions

**SECTION 12‑36‑2110.** 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)(1) 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:

 (a) aircraft, including unassembled aircraft which is to be assembled by the purchaser, but not items to be added to the unassembled aircraft;

 (b) motor vehicle;

 (c) motorcycle;

 (d) boat;

 (e) 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;

 (f) recreational vehicle, including tent campers, travel trailer, park model, park trailer, motor home, and fifth wheel; or

 (g) self‑propelled light construction equipment with compatible attachments limited to a maximum of one hundred sixty net engine horsepower.

 (2) In the case of a lease, the total tax rate required by this section 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.

 (3) Notwithstanding any other provision of this subsection, after June 30, 2017, the maximum tax imposed pursuant to this chapter on the sale, lease, or registration of an item enumerated in item (1) only applies to items not subject to the fee pursuant to Section 56‑3‑627.

 (4) Notwithstanding any other provision of this subsection, after June 30, 2017, the maximum tax imposed pursuant to this chapter on the sale, lease, or registration of an item enumerated in item (1) is increased from three hundred dollars to five hundred dollars, mutatis mutandis. Notwithstanding Section 59‑21‑1010, or any other provision of law, any revenue resulting from the increase contained in this item must be credited to the Infrastructure Maintenance Trust Fund.

 (5) Notwithstanding any other provision of law, revenues resulting from the maximum tax imposed pursuant to this chapter on the sale, lease, or registration of an item enumerated in item (1) which would be subject to the fee set forth in Section 56‑3‑627 but for the state in which it is registered, must be collected by and remitted to the Department of Motor Vehicles. Upon collection, the Department of Motor Vehicles must transfer all the revenues to the Infrastructure Maintenance Trust Fund.

 (B) For the sale of a manufactured home, as defined in Section 40‑29‑20, the tax is calculated as follows:

 (1) subtract trade‑in allowance from the sales price;

 (2) multiply the result from item (1) by sixty‑five percent;

 (3) if the result from item (2) is no greater than six thousand dollars, multiply by five percent for the amount of tax due;

 (4) if the result from item (2) is greater than six thousand dollars, the tax due is three hundred dollars plus two percent of the amount greater than six thousand dollars.

 However, a manufactured home is exempt from any tax in excess of three hundred dollars that may be due as a result of the calculation in item (4) if it meets these energy efficiency levels: storm or double pane glass windows, insulated or storm doors, a minimum thermal resistance rating of the insulation only of R‑11 for walls, R‑19 for floors, and R‑30 for ceilings. However, variations in the energy efficiency levels for walls, floors, and ceilings are allowed and the exemption on tax due above three hundred dollars applies if the total heat loss does not exceed that calculated using the levels of R‑11 for walls, R‑19 for floors, and R‑30 for ceilings. The edition of the American Society of Heating, Refrigerating, and Air Conditioning Engineers Guide in effect at the time is the source for heat loss calculation. Notwithstanding the provisions of this subsection, from July 1, 2009, to July 1, 2019, a manufactured home is exempt from any tax that may be due as a result of the calculation in this subsection if it has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency’s energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency’s ENERGY STAR program. The dealer selling the manufactured home must maintain records, on forms provided by the State Energy Office, on each manufactured home sold that meets the energy efficiency levels provided for in this subsection. These records must be maintained for three years and must be made available for inspection upon request of the Department of Consumer Affairs or the State Energy Office.

 The maximum tax authorized by this subsection does not apply to a single‑family modular home regulated pursuant to Chapter 43, Title 23.

 (C) For the sale of each musical instrument, or each piece of office equipment, purchased by a religious organization exempt under Internal Revenue Code Section 501(c)(3), the maximum tax imposed by this chapter is three hundred dollars. The musical instrument or office equipment must be located on church property and used exclusively for the organizations exempt purpose. The religious organization must furnish to the seller an affidavit on forms prescribed by the department. The affidavit must be retained by the seller.

 (D) Repealed.

 (E) Equipment provided, supplied, or installed on a firefighting vehicle is included with the vehicle for purposes of calculating the maximum tax due under this section.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1991 Act No. 110, Section 1; 1992 Act No. 449, Part III, Section 3; 1994 Act No. 331, Section 2; 1994 Act No. 497, Part II, Section 92A; 1996 Act No. 431, Section 8; 1997 Act No. 149, Section 9B; 1997 Act No. 151, Section 1B; 1998 Act No. 419, Part II, Section 31A; 2000 Act No. 283, Section 5(G)(1), eff for taxable years after June 30, 2001; 2005 Act No. 12, Section 3, eff January 13, 2005; 2005 Act No. 161, Section 29, eff June 9, 2005; 2008 Act No. 354, Section 1, eff July 1, 2009; 2017 Act No. 40 (H.3516), Section 7.A, eff July 1, 2017.

Effect of Amendment

2017 Act No. 40, Section 7.A, redesignated (A) as (A)(1) and redesignated the rest of (A) accordingly; in (A)(2), substituted “this section” for “law”; added (A)(3) to (A)(5), relating to increasing the maximum tax on certain items; and made nonsubstantive changes.

Cross References

Additional sales, use, and casual excise tax not applicable to items subject to a maximum sales and use tax pursuant to Section 12‑36‑2110, see Section 12‑36‑1110.

Sales and use tax regulations, manufactured homes and modular homes, see S.C. Code of Regulations R. 117‑335.

Federal Aspects

Religious organizations exempt under Internal Revenue Code Section 501(c)(3), see 26 U.S.C.A. Section 501(c)(3).

Library References

Taxation 3672.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2186 to 2187.

United States Supreme Court Annotations

Tax legislation as violating Federal Constitution’s First Amendment—Supreme Court cases. 103 L Ed 2d 951.

Attorney General’s Opinions

Energy efficiency standards set forth in Section 12‑36‑2110(B)(4) may be considered as group so as to allow trade‑offs as long as equivalent level of energy efficiency is achieved. 1993 Op Atty Gen No. 93‑2 (January 25, 1993) 1993 WL 720069.

County governing body is required to furnish probate court with office space, furnishings, books and so forth within county seat but not necessarily within walls of county courthouse. 1993 Op Atty Gen No. 93‑1 (January 12, 1993) 1993 WL 720067.

NOTES OF DECISIONS

Constitutional issues 1

Justiciability 2

1. Constitutional issues

Taxpayer’s contention that sheer number of statutory caps on, and exemptions from, state sales tax removed any rational relationship they had to the underlying tax was insufficient to establish a violation of equal protection or of the prohibition against special legislation; taxpayer was required to address the content of the challenged caps and exemptions, not merely their size and volume. Bodman v. State (S.C. 2013) 403 S.C. 60, 742 S.E.2d 363. Constitutional Law 3576; Statutes 1645; Taxation 3627

2. Justiciability

Plaintiff’s status as a mere taxpayer was insufficient to confer standing on him to bring action challenging constitutionality of the exemptions and caps placed on state’s sales tax; any harm suffered by plaintiff as result of the tax scheme was shared by all taxpayers in the state, and, thus, he had not suffered a concrete and particularized injury. Bodman v. State (S.C. 2013) 403 S.C. 60, 742 S.E.2d 363. States 168.5

**SECTION 12‑36‑2120.** Exemptions from sales tax.

 Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

 (1) tangible personal property or receipts of any business which the State is prohibited from taxing by the Constitution or laws of the United States of America or by the Constitution or laws of this State;

 (2) tangible personal property sold to the federal government;

 (3)(a) textbooks, books, magazines, periodicals, newspapers, and access to on‑line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students’ use in the school library of these schools and institutions;

 (b) books, magazines, periodicals, newspapers, and access to on‑line information systems sold to publicly supported state, county, or regional libraries;

 Items in this category may be in any form, including microfilm, microfiche, and CD ROM; however, transactions subject to tax under Sections 12‑36‑910(B)(3) and 12‑36‑1310(B)(3) do not fall within this exemption;

 (4) livestock. “Livestock” is defined as domesticated animals customarily raised on South Carolina farms for use primarily as beasts of burden, or food, and certain mammals when raised for their pelts or fur. Animals such as dogs, cats, reptiles, fowls (except baby chicks and poults), and animals of a wild nature, are not considered livestock;

 (5) feed used for the production and maintenance of poultry and livestock;

 (6) insecticides, chemicals, fertilizers, soil conditioners, seeds, or seedlings, or nursery stock, used solely in the production for sale of farm, dairy, grove, vineyard, or garden products or in the cultivation of poultry or livestock feed;

 (7) containers and labels used in:

 (a) preparing agricultural, dairy, grove, or garden products for sale; or

 (b) preparing turpentine gum, gum spirits of turpentine, and gum resin for sale.

 For purposes of this exemption, containers mean boxes, crates, bags, bagging, ties, barrels, and other containers;

 (8) newsprint paper, newspapers, and religious publications, including the Holy Bible and the South Carolina Department of Agriculture’s The Market Bulletin;

 (9) coal, or coke or other fuel sold to manufacturers, electric power companies, and transportation companies for:

 (a) use or consumption in the production of by‑products;

 (b) the generation of heat or power used in manufacturing tangible personal property for sale. For purposes of this item, “manufacturer” or “manufacturing” includes the activities of a processor;

 (c) the generation of electric power or energy for use in manufacturing tangible personal property for sale;

 (d) the generation of motive power for transportation. For the purposes of this exemption, “manufacturer” or “manufacturing” includes the activities of mining and quarrying;

 (e) the generation of motive power for test flights of aircraft by the manufacturer of the aircraft where:

 (i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility over a seven‑year period; and

 (ii) the taxpayer creates at least three thousand eight hundred full‑time new jobs at the single manufacturing facility during that seven‑year period; or

 (f) the transportation of an aircraft prior to its completion from one facility of the manufacturer of the aircraft to another facility of the manufacturer of the aircraft, not including the transportation of major component parts for construction or assembly, or the transportation of personnel. This exemption only applies when:

 (i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility over a seven‑year period; and

 (ii) the taxpayer creates at least three thousand eight hundred full‑time new jobs at the single manufacturing facility during that seven‑year period.

 To qualify for the exemptions provided for in subitems (e) and (f), the taxpayer shall notify the department before the first month it uses the exemption and shall make the required investment and create the required number of full‑time new jobs over the seven‑year period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the seven hundred fifty million dollar investment requirement and has created the three thousand eight hundred full‑time new jobs or, after the expiration of the seven‑year period, that it has not met the seven hundred fifty million dollar investment requirement and created the three thousand eight hundred full‑time new jobs. The department may assess any tax due on fuel purchased tax free pursuant to subitems (e) and (f) but due the State as a result of the taxpayer’s failure to meet the seven hundred fifty million dollar investment requirement and create the three thousand eight hundred full‑time new jobs. The running of the periods of limitations for assessment of taxes provided in Section 12‑54‑85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the seven hundred fifty million dollar investment requirement and created the three thousand eight hundred full‑time new jobs.

 As used in subitems (e) and (f), “taxpayer” includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.

 (10)(a) meals or foodstuffs used in furnishing meals to school children, if the sales or use are within school buildings and are not for profit;

 (b) meals or foodstuffs provided to elderly or disabled persons at home by nonprofit organizations that receive only charitable contributions in addition to sale proceeds from the meals;

 (c) food stuffs, either prepared or packaged for the homeless or needy that are sold to nonprofit organizations, or food stuffs that are subsequently sold or donated by a nonprofit organization to another nonprofit organization. This subitem is only applicable to food stuffs which are eligible for purchase under the USDA food stamp program;

 (d) meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in‑home service to the homeless or needy or disabled adults over eighteen years of age or individuals over sixty years of age. This subitem only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program;

 (11)(a) toll charges for the transmission of voice or messages between telephone exchanges;

 (b) charges for telegraph messages;

 (c) carrier access charges and customer access line charges established by the Federal Communications department or the South Carolina Public Service department; and

 (d) transactions involving automatic teller machines;

 (12) water sold by public utilities, if rates and charges are of the kind determined by the Public Service Commission, or water sold by nonprofit corporations organized pursuant to Chapter 36, Title 33;

 (13) fuel, lubricants, and supplies for use or consumption aboard ships in intercoastal trade or foreign commerce. This exemption does not exempt or exclude from the tax the sale of materials and supplies used in fulfilling a contract for the painting, repair, or reconditioning of ships and other watercraft;

 (14) wrapping paper, wrapping twine, paper bags, and containers, used incident to the sale and delivery of tangible personal property;

 (15)(a) motor fuel, blended fuel, and alternative fuel subject to tax under Chapter 28, Title 12; however, gasoline used in aircraft is not exempt from the sales and use tax;

 (b) if the fuel tax is subsequently refunded under Section 12‑28‑710, the sales or use tax is due unless otherwise exempt, and the person receiving the refund is liable for the sales or use tax;

 (c) fuels used in farm machinery and farm tractors;

 (d) fuels used in commercial fishing vessels;

 (e) natural gas sold to a person with a miscellaneous motor fuel user fee license pursuant to Section 12‑28‑1139, who will compress it to produce compressed natural gas, or cool it to produce liquefied natural gas, for use as a motor fuel and remit the motor fuel user fees as required by law; and

 (f) liquefied petroleum gas sold to a person with a miscellaneous motor fuel user fee license pursuant to Section 12‑28‑1139, who will use the liquefied petroleum gas as a motor fuel and remit the motor fuel user fees as required by law;

 (16) farm machinery and their replacement parts and attachments, used in planting, cultivating or harvesting farm crops, including bulk coolers (farm dairy tanks) used in the production and preservation of milk on dairy farms, and machines used in the production of poultry and poultry products on poultry farms, when such products are sold in the original state of production or preparation for sale. This exemption does not include automobiles or trucks;

 (17) machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale. “Machines” include the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which (a) are necessary to the operation of the machines and are customarily so used, or (b) are necessary to comply with the order of an agency of the United States or of this State for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by any machine used as provided in this section. This exemption does not include automobiles or trucks. As used in this item “recycling” means a process by which materials that otherwise would become solid waste are collected, separated, or processed and reused, or returned to use in the form of raw materials or products, including composting, for sale. In applying this exemption to machines used in recycling, the following percentage of the gross proceeds of sale, or sales price of, machines used in recycling are exempt from the taxes imposed by this chapter:

|  |  |
| --- | --- |
|  |  |
| Fiscal Year of Sale | Percentage |
| Fiscal year 1997‑98 | fifty percent |
| After June 30, 1998 | one hundred percent; |

 (18) fuel used exclusively to cure agricultural products;

 (19) electricity used by cotton gins, manufacturers, miners, or quarriers to manufacture, mine, or quarry tangible personal property for sale. For purposes of this item, “manufacture” or “manufacture” includes the activities of processors;

 (20) railroad cars, locomotives, and their parts, monorail cars, and the engines or motors that propel them, and their parts;

 (21) vessels and barges of more than fifty tons burden;

 (22) materials necessary to assemble missiles to be used by the Armed Forces of the United States;

 (23) farm, grove, vineyard, and garden products, if sold in the original state of production or preparation for sale, when sold by the producer or by members of the producers immediate family;

 (24) supplies and machinery used by laundries, cleaning, dyeing, pressing, or garment or other textile rental establishments in the direct performance of their primary function, but not sales of supplies and machinery used by coin‑operated laundromats;

 (25) motor vehicles (excluding trucks) or motorcycles, which are required to be licensed to be used on the highways, sold to a resident of another state, but who is located in South Carolina by reason of orders of the United States Armed Forces. This exemption is allowed only if within ten days of the sale the vendor is furnished a statement from a commissioned officer of the Armed Forces of a higher rank than the purchaser certifying that the buyer is a member of the Armed Forces on active duty and a resident of another state or if the buyer furnishes a leave and earnings statement from the appropriate department of the armed services which designates the state of residence of the buyer;

 (26) all supplies, technical equipment, machinery, and electricity sold to radio and television stations, and cable television systems, for use in producing, broadcasting, or distributing programs. For the purpose of this exemption, radio stations, television stations, and cable television systems are deemed to be manufacturers;

 (27) all plants and animals sold to any publicly supported zoological park or garden or to any of its nonprofit support corporations;

 (28)(a) medicine and prosthetic devices sold by prescription, prescription medicines used to prevent respiratory syncytial virus, prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment, free samples of prescription medicine distributed by its manufacturer and any use of these free samples;

 (b) hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies sold to diabetics under the authorization and direction of a physician;

 (c) disposable medical supplies such as bags, tubing, needles, and syringes, which are dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a licensed health care provider, which are used for the intravenous administration of a prescription drug or medicine, and which come into direct contact with the prescription drug or medicine. This exemption applies only to supplies used in the treatment of a patient outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center;

 (d) medicine donated by its manufacturer to a public institution of higher education for research or for the treatment of indigent patients;

 (e) dental prosthetic devices; and

 (f) prescription drugs dispensed to Medicare Part A patients residing in a nursing home are not considered sales to the nursing home and are not subject to the sales tax;

 (29) tangible personal property purchased by persons under a written contract with the federal government when the contract necessitating the purchase provides that title and possession of the property is to transfer from the contractor to the federal government at the time of purchase or after the time of purchase. This exemption also applies to purchases of tangible personal property which becomes part of real or personal property owned by the federal government or, as provided in the written contract, is to transfer to the federal government. This exemption does not apply to purchases of tangible personal property used or consumed by the purchaser;

 (30) office supplies, or other commodities, and services resold by the Division of General Services of the Department of Administration to departments and agencies of the state government, if the tax was paid on the divisions original purchase;

 (31) vacation time sharing plans, vacation multiple ownership interests, and exchanges of interests in vacation time sharing plans and vacation multiple ownership interests as provided by Chapter 32, Title 27, and any other exchange of accommodations in which the accommodations to be exchanged are the primary consideration;

 (32) natural and liquefied petroleum gas and electricity used exclusively in the production of poultry, livestock, swine, and milk;

 (33) electricity, natural gas, fuel oil, kerosene, LP gas, coal, or any other combustible heating material or substance used for residential purposes. Individual sales of kerosene or LP gas of twenty gallons or less by retailers are considered used for residential heating purposes;

 (34) fifty percent of the gross proceeds of the sale of a modular home regulated pursuant to Chapter 43, Title 23, both on‑frame and off‑frame. For purposes of this item only, “gross proceeds of sale” equals the manufacturer’s net invoice price of the modular home sold, including all accessories built in to the modular home at the time of delivery to the purchaser and not including freight or deposit on returnable materials. The manufacturer shall collect the tax and remit it to the Department of Revenue;

 (35) motion picture film sold or rented to or by theaters;

 (36) tangible personal property where the seller, by contract of sale, is obligated to deliver to the buyer, or to an agent or donee of the buyer, at a point outside this State or to deliver it to a carrier or to the mails for transportation to the buyer, or to an agent or donee of the buyer, at a point outside this State;

 (37) petroleum asphalt products, commonly used in paving, purchased in this State, which are transported and consumed out of this State;

 (38) hearing aids, as defined by Section 40‑25‑20(5);

 (39) concession sales at a festival by an organization devoted exclusively to public or charitable purposes, if:

 (a) all the net proceeds are used for those purposes;

 (b) in advance of the festival, its organizers provide the department, on a form it prescribes, information necessary to ensure compliance with this item.

 For purposes of this item, a “festival” does not include a recognized state or county fair;

 (40) containers and chassis, including all parts, components, and attachments, sold to international shipping lines which have a contractual relationship with the South Carolina State Ports Authority and which are used in the import or export of goods to and from this State;

 (41) items sold by organizations exempt under Section 12‑37‑220A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24), if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual. An organization whose sales are exempted by this item is also exempt from the retail license tax provided in Article 5 of this chapter;

 (42) depreciable assets, used in the operation of a business, pursuant to the sale of the business. This exemption only applies when the entire business is sold by the owner of it, pursuant to a written contract and the purchaser continues operation of the business;

 (43) all supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures. For the purposes of this item, “motion picture” means any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media; and a “motion picture company” means a company generally engaged in the business of filming or producing motion pictures;

 (44) electricity used to irrigate crops;

 (45) building materials, supplies, fixtures, and equipment for the construction, repair, or improvement of or that become a part of a self‑contained enclosure or structure specifically designed, constructed, and used for the commercial housing of poultry or livestock.

 (46) War memorials or monuments honoring units or contingents of the Armed Forces of the United States or of the National Guard, including United States military vessels, which memorials or monuments are affixed to public property;

 (47) tangible personal property sold to charitable hospitals predominantly serving children exempt under Section 12‑37‑220, where care is provided without charge to the patient.

 (48) solid waste disposal collection bags required pursuant to the solid waste disposal plan of a county or other political subdivision if the plan requires the purchase of a specifically designated containment bag for solid waste disposal;

 (49) postage purchased by a person engaged in the business of selling advertising services for clients consisting of mailing, or directing the mailing of, printed advertising material through the United States mail directly to the client’s customers or potential customers or by a person to mail or direct the mailing of printed advertising material through the United States mail to a potential customer;

 (50)(a) recycling property;

 (b) electricity, natural gas, propane, or fuels of any type, oxygen, hydrogen, nitrogen, or gasses of any type, and fluids and lubricants used by a qualified recycling facility;

 (c) tangible personal property which becomes, or will become, an ingredient or component part of products manufactured for sale by a qualified recycling facility;

 (d) tangible personal property of or for a qualified recycling facility which is or will be used (1) for the handling or transfer of postconsumer waste material, (2) in or for the manufacturing process, or (3) in or for the handling or transfer of manufactured products;

 (e) machinery and equipment foundations used or to be used by a qualified recycling facility;

 (f) as used in this item, “recycling property”, “qualified recycling facility”, and “postconsumer waste material” have the meanings provided in Section 12‑6‑3460;

 (51) material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility including, but not limited to, racks used in the operation of a distribution facility or a manufacturing facility and either used or not used to support a facility structure or part of it. To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall invest at least thirty‑five million dollars in real or personal property in this State over the five‑year period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the thirty‑five million dollar investment requirement or, after the expiration of the five years, that it has not met the thirty‑five million dollar investment requirement. The department may assess any tax due on material handling systems and material handling equipment purchased tax‑free pursuant to this item but due the State as a result of the taxpayer’s failure to meet the thirty‑five million dollar investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12‑54‑85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the thirty‑five million dollar investment requirement;

 (52) parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft;

 (53) motor vehicle extended service contracts and motor vehicle extended warranty contracts;

 (54) clothing and other attire required for working in a Class 100 or better as defined in Federal Standard 209E clean room environment;

 (55) audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. For purposes of this item:

 (a) “Audiovisual master” means an audio or video film, tape, or disk, or another audio or video storage device from which all other copies are made;

 (b) “Production company” means a person or entity engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or education purposes;

 (56) machines used in research and development. “Machines” includes machines and parts of machines, attachments, and replacements which are used or manufactured for use on or in the operation of the machines, which are necessary to the operation of the machines, and which are customarily used in that way. “Machines used in research and development” means machines used directly and primarily in research and development, in the experimental or laboratory sense, of new products, new uses for existing products, or improvement of existing products;

 (57)(a) sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of:

 (i) clothing;

 (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags;

 (iii) footwear;

 (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators;

 (v) computers, printers and printer supplies, and computer software;

 (vi) bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.

 (b) The exemption allowed by this item does not apply to:

 (i) sales of jewelry, cosmetics, eyewear, wallets, watches;

 (ii) sales of furniture;

 (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described;

 (iv) rental of clothing or footwear;

 (v) a sale or lease of an item for use in a trade or business.

 (c) Before July tenth of each year, the department shall publish and make available to the public and retailers a list of those articles qualifying for the exemption allowed by this item;

 (58) cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus who are exempt from income taxation pursuant to Internal Revenue Code Section 501(c) delivered at no charge by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the State. For purposes of this item, “cooperative direct mail promotional advertising materials” means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material;

 (59) facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act;

 (60) a lottery ticket sold pursuant to Chapter 150, Title 59;

 (61) copies of or access to legislation or other informational documents provided to the general public or any other person by a legislative agency when a charge for these copies is made reflecting the agency’s cost of the copies. Funds received as revenue from the sale of materials or as reimbursements for the cost of providing certain supplies or services or refunds must be remitted to the State Treasurer as collected, but in no event later than twelve working days from the date of the receipt of any such funds;

 (62) seventy percent of the gross proceeds of the rental or lease of portable toilets;

 (63) prescription and over‑the‑counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, sold to a health care clinic that provides medical and dental care without charge to all of its patients;

 (64) sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass;

 (65)(a) computer equipment, as defined in subitem (c) of this item, used in connection with a technology intensive facility as defined in Section 12‑6‑3360(M)(14)(b), where:

 (i) the taxpayer invests at least three hundred million dollars in real or personal property or both comprising or located at the facility over a five‑year period;

 (ii) the taxpayer creates at least one hundred new full‑time jobs at the facility during that five‑year period, and the average cash compensation of at least one hundred of the new full‑time jobs is one hundred fifty percent of the per capita income of the State according to the most recently published data available at the time the facility’s construction starts; and

 (iii) at least sixty percent of the three hundred million dollars minimum investment consists of computer equipment;

 (b) computer equipment, as defined in subitem (c) of this item, used in connection with a manufacturing facility, where:

 (i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at the facility over a seven‑year period; and

 (ii) the taxpayer creates at least three thousand eight hundred full‑time new jobs at the facility during that seven‑year period.

 As used in this subitem, “taxpayer” includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.

 (c) For the purposes of this item, “computer equipment” means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.

 (d) These exemptions apply from the start of the investment in or construction of the technology intensive facility or the manufacturing facility. The taxpayer shall notify the Department of Revenue of its use of the exemption provided in this item on or before the first sales tax return filed with the department after the first such use. Upon receipt of the notification, the department shall issue an appropriate exemption certificate to the taxpayer to be used for qualifying purposes under this item. Within six months after the fifth anniversary of the taxpayer’s first use of this exemption, the taxpayer shall notify the department in writing that it has or has not met the investment and job requirements of this item by the end of that five‑year period. Once the department certifies that the taxpayer has met the investment and job requirements, all subsequent purchases of or investments in computer equipment, including to replace originally deployed computer equipment or to implement future expansions, likewise shall qualify for the exemption described above, regardless of when the taxpayer makes the investments.

 (e) The department may assess any tax due on property purchased tax free pursuant to this item but due the State if the taxpayer subsequently fails timely to meet the investment and job requirements of this item after being granted the exemption; for purposes of determining whether the taxpayer has timely satisfied the investment requirement, replacement computer equipment counts toward the investment requirement to the extent that the value of the replacement computer equipment exceeds the cost of the computer equipment so replaced, but, provided the taxpayer otherwise qualifies for the exemption, the full value of the replacement computer equipment is exempt from sales and use tax. The running of the periods of limitation within which the department may assess taxes provided pursuant to Section 12‑54‑85 is suspended during the time period beginning with the taxpayer’s first use of this exemption and ending with the later of the fifth anniversary of first use or notice to the department that the taxpayer either has met or has not met the investment and job requirements of this item;

 (66) electricity used by a technology intensive facility as defined in Section 12‑6‑3360(M)(14)(b) and qualifying for the sales tax exemption provided pursuant to item (65) of this section, and the equipment and raw materials including, without limitation, fuel used by such qualifying facility to generate, transform, transmit, distribute, or manage electricity for use in such a facility. The running of the periods of limitation within which the department may assess taxes pursuant to Section 12‑54‑85 is suspended during the same time period it is suspended in item (65)(d) of this section;

 (67) effective July 1, 2011, construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen‑month period, or effective November 1, 2009, construction materials used in the construction of a new or expanded single manufacturing facility where:

 (i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at the facility over a seven‑year period; and

 (ii) the taxpayer creates at least three thousand eight hundred full‑time new jobs at the facility during that seven‑year period.

 To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall make the required investment over the applicable time period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the investment requirement or, after the expiration of the applicable time period, that it has not met the investment requirement. The department may assess any tax due on construction materials purchased tax free pursuant to this subitem but due the State as a result of the taxpayer’s failure to meet the investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12‑54‑85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the investment requirement.

 As used in this subitem, “taxpayer” includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code;

 (68) any property sold to the public through a sheriff’s sale as provided by law;

 (69) [Reserved]

 (70)(a) gold, silver, or platinum bullion, or any combination of this bullion;

 (b) coins that are or have been legal tender in the United States or other jurisdiction; and

 (c) currency.

 The department shall prescribe documentation that must be maintained by retailers claiming the exemption allowed by this item. This documentation must be sufficient to identify each individual sale for which the exemption is claimed;

 (71) any device, equipment, or machinery operated by hydrogen or fuel cells, any device, equipment, or machinery used to generate, produce, or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications, and any device, equipment, or machinery used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies. For purposes of this item:

 (a) “fuel cells” means a device that directly or indirectly creates electricity using hydrogen (or hydrocarbon‑rich fuel) and oxygen through an electro‑chemical process; and

 (b) “research and development” means laboratory, scientific, or experimental testing and development of hydrogen or fuel cell technologies. Research and development does not include efficiency surveys, management studies, consumer surveys, economic surveys, advertising, or promotion, or research in connection with literary, historical, or similar projects;

 (72) any building materials used to construct a new or renovated building or any machinery or equipment located in a research district. However, the amount of the sales tax that would be assessed without the exemption provided by this section must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district within twenty‑four months of the purchase of an exempt item.

 “Research district” means land owned by the State, a county, or other public entity that is designated as a research district by the University of South Carolina, Clemson University, the Medical University of South Carolina, South Carolina State University, or the Savannah River National Laboratory;

 (73) an amusement park ride and any parts, machinery, and equipment used to assemble, operate, and make up an amusement park ride or performance venue facility located in a qualifying amusement park or theme park and any related or required machinery, equipment, and fixtures located in the same qualifying amusement park or theme park.

 (a) To qualify for the exemption, the taxpayer shall meet the investment and job requirements provided in subitem (b)(i) over a five‑year period beginning on the date of the taxpayer’s first use of this exemption. The taxpayer shall notify the Department of Revenue of its intent to qualify and use this exemption and upon receipt of the notification, the department shall issue an appropriate exemption certificate to the taxpayer to be used for qualifying purposes under this item. Within six months after the fifth anniversary of the taxpayer’s first use of this exemption, the taxpayer shall notify the department, in writing, that it has or has not met the investment and job requirements of this item. If the taxpayer fails to meet the investment and job requirements, the taxpayer shall pay to the State the amount of the tax that would have been paid but for this exemption. The running of the periods of limitations for assessment of taxes provided in Section 12‑54‑85 is suspended for this time period beginning with the taxpayer’s first use of this exemption and ending with notice to the department that the taxpayer has or has not met the investment and job requirements of this item.

 (b) For purposes of this item:

 (i) “Qualifying amusement park or theme park” means a park that is constructed and operated by a taxpayer who makes a capital investment of at least two hundred fifty million dollars at a single site and creates at least two hundred fifty full‑time jobs and five hundred part‑time or seasonal jobs.

 (ii) “Related or required machinery, equipment, and fixtures” means an ancillary apparatus used for or in conjunction with an amusement park ride or performance venue facility, or both, including, but not limited to, any foundation, safety fencing and equipment, ticketing, monitoring device, computer equipment, lighting, music equipment, stage, queue area, housing for a ride, electrical equipment, power transformers, and signage.

 (iii) “Performance venue facility” means a facility for a live performance, nonlive performance, including any animatronics and computer‑generated performance, and firework, laser, or other pyrotechnic show.

 (iv) “Taxpayer” means a single taxpayer or, collectively, a group of one or more affiliated taxpayers. An “affiliated taxpayer” means a person or entity related to the taxpayer that is subject to common operating control and that is operated as part of the same system or enterprise. The taxpayer is not required to own a majority of the voting stock of the affiliate;

 (74) durable medical equipment and related supplies:

 (a) as defined under federal and state Medicaid and Medicare laws;

 (b) which is paid directly by funds of this State or the United States under the Medicaid or Medicare programs, where state or federal law or regulation authorizing the payment prohibits the payment of the sale or use tax; and

 (c) sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in this State;

 (75) unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. However, the exemption allowed by this item applies only to the state sales and use tax imposed pursuant to this chapter;

 (76) sales of handguns as defined pursuant to Section 16‑23‑10(1), rifles, and shotguns during the forty‑eight hours of the Second Amendment Weekend. For purposes of this item, the “Second Amendment Weekend” begins at 12:01 a.m. on the Friday after Thanksgiving and ends at twelve midnight the following Saturday;

 (77) energy efficient products purchased for noncommercial home or personal use with a sales price of two thousand five hundred dollars per product or less.

 (a) For the purposes of this exemption, an “energy efficient product” is any energy efficient product for noncommercial home or personal use consisting of any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency’s energy‑saving efficiency requirements or which have been designated as meeting or exceeding such requirements under each agency’s ENERGY STAR program, and gas, oil, or propane water heaters with an energy factor of 0.80 or greater and electric water heaters with an energy factor of 2.0 or greater.

 (b) This exemption shall not apply to purchases of energy efficient products purchased for trade, business, or resale.

 (c) The exemption provided in this item applies only to sales occurring during a period commencing at 12:01 a.m. on October 1, 2009, and concluding at 12:00 midnight on October 31, 2009, (National “Energy Efficiency Month”) and every year thereafter until 2019.

 (d) Each year until 2019, the State Energy Office shall prepare an annual report on the fiscal and energy impacts of the October first through October thirty‑first exemption and submit the report to the General Assembly no later than January first of the following year.

 (e) Beginning with the February 15, 2009, forecast by the Board of Economic Advisors of annual general fund revenue growth for the upcoming fiscal year, and annually after that, if the forecast of that growth then and in any adjusted forecast made before the beginning of the fiscal year equals at least five percent of the most recent estimate by the board of general fund revenues for the current fiscal year, then the exemption allowed by this item shall be allowed for the applicable year. If the February fifteenth forecast or adjusted forecast annual general fund revenue growth for the upcoming fiscal year meets the requirement for the credit, the board promptly shall certify this result in writing to the department;

 (78) machinery and equipment, building and other raw materials, and electricity used in the operation of a facility owned by an organization which qualifies as a tax exempt organization pursuant to the Internal Revenue Code Section 501(c)(3) when the facility is principally used for researching and testing the impact of such natural hazards as wind, fire, water, earthquake, and hail on building materials used in residential, commercial, and agricultural buildings. To qualify for this exemption, the taxpayer shall notify the department of its intent to qualify and shall invest at least twenty million dollars in real or personal property at a single site in this State over the three‑year period beginning on the date provided by the taxpayer to the department in its notices. After the taxpayer notifies the department of its intent to qualify and use the exemption, the department shall issue an appropriate exemption certificate to the taxpayer to be used for qualifying purposes. Within six months of the third anniversary of the taxpayer’s first use of the exemption, the taxpayer shall notify the department in writing that it has met the twenty million dollar investment requirement or, that it has not met the twenty million dollar investment requirement. The department may assess any tax due on the machinery and equipment purchased tax free pursuant to this item but due the State as a result of the taxpayer’s failure to meet the twenty million dollar investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12‑54‑85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the twenty million dollar investment requirement;

 (79)(A)(1) original or replacement computers, computer equipment, and computer hardware and software purchases used within a datacenter; and

 (2) electricity used by a datacenter and eligible business property to be located and used at the datacenter. This subsubitem does not apply to sales of electricity for any other purpose, and such sales are subject to the tax, including, but not limited to, electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters and waste house lights.

 (B) As used in this section:

 (1) “Computer” means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

 (2) “Computer equipment” means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research. This also includes equipment cooling systems for managing the performance of the datacenter property, including mechanical and electrical equipment, hardware for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and systems.

 (3) “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

 (4) “Concurrently maintainable” means capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.

 (5) “Datacenter” means a new or existing facility at a single location in South Carolina:

 (i) that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time;

 (ii)(a) where a taxpayer invests at least fifty million dollars in real or personal property or both over a five year period; or

 (b) where one or more taxpayers invests a minimum aggregate capital investment of at least seventy‑five million dollars in real or personal property or both over a five year period;

 (iii) where a taxpayer creates and maintains at least twenty‑five full‑time jobs at the facility with an average cash compensation level of one hundred fifty percent of the per capita income of the State or of the county in which the facility is located, whichever is lower, according to the most recently published data available at the time the facility is certified by the Department of Commerce;

 (iv) where the jobs created pursuant to subitem (B)(5)(iii) are maintained for three consecutive years after a facility with the minimum capital investment and number of jobs has been certified by the Department of Commerce; and

 (v) which is certified by the Department of Commerce pursuant to subitem (D)(1) under such policies and procedures as promulgated by the Department of Commerce.

 (6) “Eligible business property” means property used for the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

 (7) “Multiple distribution paths” means a series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.

 (8) “Redundant capacity components” means components beyond those required to support the computer equipment.

 (C)(1) To qualify for the exemption allowed by this item, a taxpayer, and the facility in the case of a seventy‑five million dollar investment made by more than one taxpayer, shall notify the Department of Revenue and Department of Commerce, in writing, of its intention to claim the exemption. For purposes of meeting the requirements of subitems (B)(5)(ii) and (B)(5)(iii) , capital investment and job creation begin accruing once the taxpayer notifies each department. Also, the five‑year period begins upon notification.

 (2) Once the taxpayer meets the requirements of subitem (B)(5), or at the end of the five‑year period, the taxpayer shall notify the Department of Revenue, in writing, whether it has or has not met the requirements of subitem (B)(5). The taxpayer shall provide the proof the department determines necessary to determine that the requirements have been met.

 (D)(1) Upon notifying each department of its intention to claim the exemption pursuant to subitem (C)(1), and upon certification by the Department of Commerce, the taxpayer may claim the exemption on eligible purchases at any time during the period provided in Section 12‑54‑85(F), including the time period prior to subitem (B)(5)(iv) being satisfied.

 (2) For purposes of this section, the running of the periods of limitations for assessment of taxes provided in Section 12‑54‑85 is suspended for:

 (i) the time period beginning with notice to each department pursuant to subitem (C)(1) and ending with notice to the Department of Revenue pursuant to subitem (C)(2); and

 (ii) during the three year job maintenance requirement pursuant to subitem (B)(5)(iv).

 (E) Any subsequent purchase of or investment in computer equipment, computer hardware and software, and computers, including to replace originally deployed computer equipment or to implement future expansions, likewise shall qualify for the exemption provided in this subitem, regardless of when the taxpayer makes the investments.

 (F)(1) If a taxpayer receives the exemption for purchases but fails to meet the requirements of subitem (B)(5) at the end of the five‑year period, the department may assess any state or local sales or use tax due on items purchased.

 (2) If a taxpayer meets the requirements of subitem (B)(5), but subsequently fails to maintain the number of full‑time jobs with the required compensation level at the facility, as previously required pursuant to subitem (B)(5)(iii), the taxpayer is:

 (i) not allowed the exemption for items described in subitem (A)(1) until the taxpayer meets the previous qualifying jobs requirements pursuant to subitem (B)(5)(iii); and

 (ii) allowed the exemption for electricity pursuant to subitem (A)(2), but the exemption only applies to a percentage of the sale price, calculated by dividing the number of qualifying jobs by twenty‑five.

 (G) This subitem only applies to a datacenter that is certified by the Department of Commerce pursuant to subitem (D)(1) prior to January 1, 2032. However, this item shall continue to apply to a taxpayer that is certified by December 31, 2031, for an additional ten year period. Upon the end of the ten year period, this subitem is repealed;

 (80)(a) effective on July first immediately following a forecast meeting the requirements of subitem (b), injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services (CMS) certified kidney dialysis facility. For purposes of this exemption, “biologics” means the products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms;

 (b) Beginning with the February 15, 2013, forecast by the Board of Economic Advisors of annual general fund revenue growth for the upcoming fiscal year, and annually thereafter until the conditions of this item are met, if the forecast of that growth equals at least two percent of the most recent estimate by the board of general fund revenues for the current fiscal year, then on July first, the exemption described in subitem (a) shall apply to fifty percent of the gross proceeds of sales of the described items. Beginning the next July first, the exemption shall apply to one hundred percent of the gross proceeds of sales of the described items. If the February fifteenth forecast meets the requirement for a rate reduction, the board promptly shall certify this result in writing to the Department of Revenue.

 (81) construction materials used by an entity organized under Section 501(c)(3) of the Internal Revenue Code as a nonprofit corporation to build, rehabilitate, or repair a home for the benefit of an individual or family in need. For purposes of this item, “an individual or family in need” means an individual or family, as applicable, whose income is less than or equal to eighty percent of the county median income.

 (82) children’s clothing sold to a private charitable organization exempt from federal and state income tax, except for private schools, for the sole purpose of distribution by that organization to needy children. For purposes of this item:

 (a) “clothing” means those items exempt from sales and use tax pursuant to item (57)(a)(i) and (iii) of this section; and

 (b) “needy children” means children eligible for free meals under the National School Lunch Program of the United States Department of Agriculture.

 (83) any item subject to the fee set forth in Section 56‑3‑627.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1991 Act No. 171, Part II, Sections 25B, 25C, 29; 1992 Act No. 361, Section 16(E)‑(G); 1992 Act No. 449, Part V, Section 3; 1992 Act No. 482, Sections 1, 2; 1993 Act No. 181, Section 198; 1994 Act No. 291, Section 1; 1994 Act No. 427, Section 2; 1994 Act No. 497, Part II, Sections 45A, 75A, 119A; 1994 Act No. 506, Section 16A; 1994 Act No. 516, Sections 16, 17; 1995 Act No. 32, Section 4; 1995 Act No. 61, Sections 1, 4, 5; 1996 Act No. 346, Section 1; 1996 Act No. 431, Sections 9, 10; 1996 Act No. 458, Part II, Section 62A; 1996 Act No. 462, Section 20A; 1997 Act No. 83, Section 4A; 1997 Act No. 85, Section 1; 1997 Act No. 114, Section 7; 1997 Act No. 151, Section 10A; 1998 Act No. 340, Section 1; 1998 Act No. 362, Section 1; 1998 Act No. 362, Section 2; 1998 Act No. 419, Part II, Section 61A; 1998 Act No. 419, Part II, Section 65; 1998 Act No. 419, Part II, Section 70A; 1999 Act No. 93, Section 15; 1999 Act No. 114, Section 4; 2000 Act No. 283, Section 2(B), eff June 1, 2000; 2000 Act No. 283, Section 5(G)(2), eff for taxable years after June 30, 2001; 2000 Act No. 387, Part II, Section 4, eff June 30, 2000; 2000 Act No. 387, Part II, Section 63B, eff June 1, 2001; 2000 Act No. 399, Sections 1, 3(B)(8), 3(C)(1), 3(H), eff August 17, 2000; 2000 Act No. 404, Section 6(D), eff October 3, 2000; 2001 Act No. 59, Section 7, eff June 13, 2001; 2001 Act No. 77, Section 1, eff July 20, 2001; 2001 Act No. 89, Section 2, eff July 20, 2001, applicable to sales or deeds made or recorded after that date; 2002 Act No. 356, Section 1, Pt VI.K, eff July 1, 2002; 2003 Act No. 69, Section 3.PP, eff June 18, 2003; 2003 Act No. 69, Section 3.WW.1, eff July 1, 2003; 2005 Act No. 12, Section 2, eff January 13, 2005; 2005 Act No. 89, Section 1, eff May 31, 2005; 2005 Act No. 145, Section 1.B; 2005 Act No. 145, Section 29, eff June 7, 2005; 2005 Act No. 145, Section 57, eff June 7, 2005; 2005 Act No. 156, Section 5.A, eff June 10, 2005; 2005 Act No. 164, Section 38, eff June 10, 2005; 2006 Act No. 335, Section 4.B, eff June 6, 2006; 2006 Act No, 384, Section 11.A, eff June 14, 2006; 2006 Act No. 386, Section 22, eff June 14, 2006; 2006 Act No. 386, Section 23.A, eff October 1, 2005; 2007 Act No. 34, Section 1, eff July 1, 2007; 2007 Act No. 83, Section 6.A, eff July 1, 2007; 2007 Act No. 83, Section 4.A, eff October 1, 2007; 2007 Act No. 99, Sections 1.A, 2, eff July 1, 2007; 2007 Act No. 110, Section 24.A, eff June 6, 2006; 2007 Act No. 110, Section 42.A, eff June 21, 2007; 2007 Act No. 110 Section 3.A, eff July 1, 2007; 2007 Act No. 115, Section 3.B, eff November 1, 2007; 2007 Act No. 116, Section 30.A, eff June 6, 2006; 2007 Act No. 116, Section 47.A, eff June 28, 2007; 2007 Act No. 116, Section 62,A, eff July 1, 2007; 2008 Act No. 338, Section 1, eff July 1, 2009; 2008 Act No. 338, Section 2.B, eff July 1, 2008; 2009 Act No. 124, Sections 2.A, 3.A, and 4.A, eff October 30, 2009; 2010 Act No. 280, Section 1, eff June 16, 2010; 2011 Act No. 32, Section 2.D, eff September 1, 2011; 2012 Act No. 187, Section 7, eff June 7, 2012; 2012 Act No. 235, Section 1, eff June 18, 2012; 2015 Act No. 69 (H.3568), Sections 1, 2, 3, eff January 1, 2016; 2016 Act No. 160 (H.4328), Section 7, eff April 21, 2016; 2016 Act No. 256 (S.427), Section 5.A, eff July 1, 2016; 2017 Act No. 40 (H.3516), Section 7.B, eff July 1, 2017.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Editor’s Note

2000 Act No. 399, Section 3.Z., provides, in pertinent part, as follows:

“This section takes effect upon approval by the Governor, or as otherwise stated, except that subsection C. applies to sales occurring after the date of approval by the Governor ....”

2001 Act No. 77, Section 2.B., provides as follows:

“Notwithstanding the general effective date of this act, this section takes effect upon approval of this act by the Governor and applies with respect to retail sales occurring on or after that date and sales before that date for all periods remaining open for the assessment of taxes by agreement or by operation of law. However, a refund is not due a taxpayer of sales and use tax paid on interest, fees, or charges, however described, imposed on a customer for late payment of a bill for electricity or natural gas, or both, before the effective date of this section.”

2003 Act No. 69, Section 3.WW.3, provides as follows:

“3. Any sales tax paid as a result of an audit on a company leasing or renting portable toilets shall be refunded by the Department of Revenue upon application by the company requesting a refund. This provision applies for audits showing additional taxes due on and after June 25, 2001, up to the effective date of this section.”

2005 Act No. 145, Section 1.C, provides as follows:

“This section [amending item (58)] takes effect for tax years beginning after 2005, but does not authorize or permit refunds of taxes paid.”

2005 Act No. 156, Section 5.B, provides as follows:

“This section [amending item (61)] takes effect upon approval by the Governor and applies to all funds collected on or after July 1, 2003.”

2006 Act No. 384, Section 11.B, provides as follows:

“Notwithstanding the sales and use rates imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of qualifying construction materials used in the construction of a single manufacturing and distribution facility, created by this act, is four percent for sales from July 1, 2007, through June 30, 2008, three percent for such sales from July 1, 2008, through June 30, 2009, two percent for such sales from July 1, 2009, through June 30, 2010, and one percent for such sales from July 1, 2010, through June 30, 2011.”

2007 Act No. 83, Section 6.B, Act No. 110, Section 3.B and Act No. 116, Section 62.B, provide as follows:

“Notwithstanding the general effective date of this act, subsection A. of this section [adding item (73)] takes effect on the first day of the month succeeding the month in which this act is approved by the Governor [vetoes overridden June 19, June 21, and June 28, 2007, respectively].”

2007 Act No. 110, Section 42.B, and Act No. 116, Section 47.B provide as follows:

“Notwithstanding the sales and use tax rates imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of qualifying construction materials used in the construction of a single manufacturing or distribution facility, as provided in item (67), is four percent for sales from July 1, 2007, through June 30, 2008, three percent for sales from July 1, 2008, through June 30, 2009, two percent for sales from July 1, 2009, through June 30, 2010, and one percent for sales from July 1, 2010, through June 30, 2011.”

2008 Act No. 338Section 2.A, provides:

“This section [adding item (76)] may be cited as the “Second Amendment Recognition Act”.

2009 Act No. 81 Section 2 deleted the Joint Sales Tax Review Committee created by 2006 Act No. 388, Part V Section 1.

2009 Act No. 124, Section 2.B, provides as follows:

“The exemptions in [item (9)] subitems (e) and (f) are effective November 1, 2009, and only apply to a taxpayer that notifies the department prior to October 31, 2015, of its intent to utilize the exemption provided by this section.”

2009 Act No. 124, Section 3.B, provides as follows:

“The exemption provided for in [item (65)] subitem (b) is effective on November 1, 2009, and only applies to a taxpayer that notifies the department prior to October 31, 2015, of its intent to utilize the exemption provided by this section.”

2009 Act No. 124, Section 4.B, provides as follows:

“The additional exemption provided by this section [amending item (67)] is effective November 1, 2009, and only applies to a taxpayer that notifies the department prior to October 31, 2015, of its intent to utilize the exemption provided by this section.”

2011 Act No. 32, Sections 1.A., 1.B., and 2.E., provide as follows:

“SECTION 1. A. SECTION 1B of Act 99 of 2007 is amended to read:

“ ‘B. (A) Notwithstanding the sales and use rates imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of sales of items described in subsection (A) of this section is five and one‑half percent for such sales from July 1, 2007.

“ ‘(B) Notwithstanding the sales and use rates imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of sales of items described in subsection (A) of this section is three and one‑half percent for such sales from July 1, 2011.

“ ‘(C) Notwithstanding the sales and use rates imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of sales of items described in subsection (A) of this section is one and three‑quarters percent for such sales from July 1, 2012.

“ ‘(D) Effective January 1, 2013, the sales tax exemption on the gross proceeds of sales of items described in subsection (A) is fully implemented and no sales and use tax may be imposed on the items described in subsection (A).’

“B. Act 99 of 2007 is amended by deleting SECTION 1C which reads:

“ ‘C. Beginning with the February 15, 2008, forecast by the Board of Economic Advisors of annual general fund revenue growth for the upcoming fiscal year, and annually thereafter, if the forecast of that growth equals at least five percent of the most recent estimate by the board of general fund revenues for the current fiscal year, then the applicable state sales and use tax rate imposed on items described in subsection A of this section is reduced, effective the following July first, by one and one‑half percent in the first year and by one percent every year thereafter. That reduced rate applies until a subsequent reduction takes effect. If the February fifteenth forecast meets the requirement for a rate reduction, the board promptly shall certify this result in writing to the Department of Revenue. On the July first that the rate attains zero, the provisions of subsections B and C of this section no longer apply.’ “

“[SECTION 2.] E. Notwithstanding the general effective date provided in this act, the provisions of this section take effect on the first day of the third month beginning after the date of approval of this act.”

Effect of Amendment

2015 Act No. 69, Sections 1‑3, in (52), deleted “owned by or leased to the federal government or commercial air carriers” at the end of the first sentence; and added (81) and (82).

2016 Act No. 160, Section 7, added (15)(e) and (15)(f), relating to natural gas and liquefied petroleum gas; and deleted “and” at the end of (15)(c).

2016 Act No. 256, Section 5.A, in (17), inserted “agricultural packaging,” in the first sentence.

2017 Act No. 40, Section 7.B, added (83), relating to items subject to the fee set forth in Section 56‑3‑627.

CROSS REFERENCES

Books sold to schools and public state, county, or regional libraries, see S.C. Code of Regulations R. 117‑316.

Communications services, see S.C. Code of Regulations R. 117‑329.

Containers and other packaging material, see S.C. Code of Regulations R. 117‑312.

Documentation of entitlement to exemption for property to be delivered out of state, see Section 12‑36‑2530.

Federal government construction contracts, see S.C. Code of Regulations R. 117‑314.

Laundry, launderette, cleaning, dyeing or pressing establishments, see S.C. Code of Regulations R. 117‑303.

Manufacturers, processors, compounders, miners, and quarries, see S.C. Code of Regulations R. 117‑302.

Meals sold to school children, see S.C. Code of Regulations R. 117‑305.

Medicines, prosthetic devices and hearing aids, see S.C. Code of Regulations R. 117‑332.

Persons and organizations exempt from license tax requirements, see Section 12‑36‑510.

Radio and TV stations, see S.C. Code of Regulations R. 117‑328.

Sales and use tax regulations, agriculture, see S.C. Code of Regulations R. 117‑301.

Sales of unprepared food, see S.C. Code of Regulations, R. 117‑337.

Ships and sales of fuel, lubricants and mechanical supplies to ship, see S.C. Code of Regulations R. 117‑321.

Tax exemption certificate for persons purchasing certain items listed in this section, see Section 12‑36‑2680.

Vehicles, infrastructure maintenance fee, see Section 56‑3‑627.

Library References

Taxation 3609, 3610, 3636 to 3670.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2149 to 2150, 2155, 2166 to 2176, 2180 to 2184.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 46, Specific Applications‑ Tax Exemptions to Religious Organizations.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: State and local government; state sales tax exemption for machinery parts. 34 S.C. L. Rev. 206, August 1982.

South Carolina’s Multimillion Dollar Tax Problem: An Examination of the Manufacturer’s Machine Exemption in the South Carolina Sales Tax System. 55 SC Law Rev 665 (Spring 2004).

State sales tax: Lease and rental of tangible personal property. 24 S.C. L. Rev. 656.

United States Supreme Court Annotations

Tax legislation as violating Federal Constitution’s First Amendment ‑ Supreme Court cases. 103 L Ed 2d 951.

Attorney General’s Opinions

Discussion of whether a food item purchased from a vending machine is subject to sales tax. S.C. Op.Atty.Gen. (Oct. 24, 2007) 2007 WL 3317620.

Discussion of the constitutionality of the sales tax exemption for non‑profit corporations which sell religious materials. S.C. Op.Atty.Gen. (April 17, 2002) 2002 WL 735344.

Preprints do not qualify as “newspapers,” within the meaning of Code Section 12‑35‑550(7), and thus are not exempt from sales tax. (Decided under former law.) 1982 Op Atty Gen, No 82‑34, p 36 (May 19, 1982) 1982 WL 155004.

The term “residential purposes” as used in former Section 12‑35‑550(37) is construed to mean any space or area occupied by one or more individuals with the intent that such space or area serve as a residence, house, dwelling or abode. 1979 Op Atty Gen, No 79‑105, p 148 (August 23, 1979) 1979 WL 29110.

The gross proceeds of sale of diesel fuel are exempt from the sales tax when sold to propel a motor vehicle on a high way. The same are, however, subject to the tax when otherwise used, except where specifically exempted; in example, to propel a ship or to manufacture tangible personal property. (Decided under former law.) 1979 Op Atty Gen No 79‑68, p 84 (May 18, 1979) 1979 WL 29073.

The South Carolina Association of Certified Public Accountants Educational Fund is not an institution of higher learning within the meaning of Section 12‑35‑550(2) of the South Carolina Code. (Decided under former law.) 1978 Op Atty Gen, No 78‑182, p 210 (October 31, 1978) 1978 WL 22650.

There is no minimum size requirement to be satisfied before land can be classified as agricultural for tax purposes. (Decided under former law.) 1978 Op Atty Gen, No 78‑80, p 109 (May 4, 1978) 1978 WL 22561.

Eyeglasses that are sold by prescription of a person authorized by law to issue the same and that replace a missing part of the eye are exempt from the sales tax. (Decided under former law.) 1976‑77 Op Atty Gen, No 77‑9, p 19 (January 10, 1977) 1977 WL 24352.

Films, used for instruction purposes in public schools, are not classified as textbooks, within the meaning of former Code 1962 Section 65‑1404, and accordingly are not exempt from the South Carolina sales and use tax. 1963‑64 Op Atty Gen, No 1645, p 79 (March 18, 1964) 1964 WL 8277.

The Supreme Court of South Carolina has consistently adhered to the rule that exemptions in taxing statutes are to be strictly construed against the exemption and in favor of the tax rather than to be entitled to a liberal interpretation so as to result in an exemption. (Decided under former law.) 1963‑64 Op Atty Gen, No 1645, p 79 (March 18, 1964) 1964 WL 8277.

The term “textbooks” as appears in this section relates to textbooks of the conventional type and would not lend itself to “films” used in instruction. (Decided under former law.) 1963‑64 Op Atty Gen, No 1645, p 79 (March 18, 1964) 1964 WL 8277.

Periodicals purchased for use in the libraries of elementary schools, high schools and institutions of higher learning, are not exempt under this section [Code 1962 Section 65‑1404]. 1962‑63 Op Atty Gen, No 1558, p 128 (July 31, 1963) 1963 WL 8308.

NOTES OF DECISIONS

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1. In general

Subsidiary company, which had no employees and which was engaged exclusively in selling items of 10 cents or less through its vending machines which were serviced by its parent corporation under contract, did not lose its sales tax exempt status by becoming involved, through subsequently corrected error, in naval station business when its parent and naval station exchange executed usual type of military installation contract to which subsidiary was not a party and by which merchandise became property of exchange when placed in the machine. Industrial Vendors, Inc. v. Burts (S.C. 1966) 248 S.C. 595, 151 S.E.2d 867.

2. Constitutional issues

Taxpayer’s contention that sheer number of statutory caps on, and exemptions from, state sales tax removed any rational relationship they had to the underlying tax was insufficient to establish a violation of equal protection or of the prohibition against special legislation; taxpayer was required to address the content of the challenged caps and exemptions, not merely their size and volume. Bodman v. State (S.C. 2013) 403 S.C. 60, 742 S.E.2d 363. Constitutional Law 3576; Statutes 1645; Taxation 3627

Act enacted by the General Assembly, containing sections relating to sales tax exemptions for energy efficient products, a sales tax holiday for firearms, and regulation of fuel blending, violated the one subject rule of the Constitution, which provides that every act “shall relate to but one subject, and that shall be expressed in the title.” Const. Art. 3, 17; Code 1976, 12‑28‑340, 12‑36‑2120. American Petroleum Institute v. South Carolina Dept. of Revenue (S.C. 2009) 382 S.C. 572, 677 S.E.2d 16. Statutes 1617(14); Taxation 3626

Mere fact that Sales and Use Tax Act had 60 exemptions from sales tax did not render the Act unconstitutional as arbitrary and special legislation, considering that State identified six major categories of exemptions and provided a rational basis for each. Ed Robinson Laundry and Dry Cleaning, Inc. v. South Carolina Dept. of Revenue (S.C. 2003) 356 S.C. 120, 588 S.E.2d 97, rehearing denied. Statutes 1645; Taxation 3626

The application of a use tax to the purchase outside the state of printed advertising materials for distribution within the state was unconstitutional under the Establishment clause where the state use tax exempted religious publications and (1) such exemption was not warranted by some overarching secular purpose that justified like benefits for nonreligious groups, and (2) the effect of the exemption was to endorse the communication of religious messages. Thayer v. South Carolina Tax Com’n (S.C. 1992) 307 S.C. 6, 413 S.E.2d 810, rehearing denied.

The application of a use tax to the purchase outside the state of printed advertising materials for distribution within the state was not unconstitutional under the Free Press clause where the state use tax exempted newspapers, but not other forms of speech. Thayer v. South Carolina Tax Com’n (S.C. 1992) 307 S.C. 6, 413 S.E.2d 810, rehearing denied.

A taxpayer was not entitled to relief from taxation under Section 12‑36‑2120 after it was determined that the exemption from a portion of the use tax granted for religious publications violated the Establishment clause of the First Amendment where the taxpayer was not entitled to the exemption either in the past or after the unconstitutional exemption was severed. Thayer v. South Carolina Tax Com’n (S.C. 1992) 307 S.C. 6, 413 S.E.2d 810, rehearing denied. Taxation 3703

Imposition of a use tax upon the use and storage of trailers by a trucking company within the state was not a tax on interstate commerce, within the meaning of US Const Art 1 Section 8 clause 3, and was thus not subject to the exemption of either Section 12‑35‑820(2) or Section 12‑35‑550(1), where the trailers were transported by the trucking company to a location within the state, alterations and modifications were made on them within the state, they were registered for property tax purposes within the state, the company directed that they pick up freight within the state, and they were stored within the state for approximately two to three weeks. (Decided under former statute.) Senn Trucking Co. v. Wasson (S.C. 1984) 280 S.C. 279, 312 S.E.2d 252, certiorari denied 104 S.Ct. 3537, 467 U.S. 1252, 82 L.Ed.2d 841.

Imposition of a use tax upon a company for the purchase of 50 trailers which were both used and stored within the state did not violate the company’s rights to equal protection, on the asserted basis that Section 12‑35‑550(20) grants an exemption to railroad equipment but not to trucking equipment, since the decision to exempt railroads and not trucks and trailers from the tax was not arbitrary in view of the inherent differences between railroads and trucks. (Decided under former statute.) Senn Trucking Co. v. Wasson (S.C. 1984) 280 S.C. 279, 312 S.E.2d 252, certiorari denied 104 S.Ct. 3537, 467 U.S. 1252, 82 L.Ed.2d 841.

The exemptions from the sales and use tax levy contained in former article do not violate the “privileges and immunities,” due process and equal protection clauses in SC Const, Art 1, Section 5. State ex rel. Roddey v. Byrnes (S.C. 1951) 219 S.C. 485, 66 S.E.2d 33. Constitutional Law 2893; Constitutional Law 3576; Constitutional Law 4145; Taxation 3627

3. Construction contracts

Where contractor’s bid on public housing project was unconditionally accepted and there was a legally enforceable contract on March 26, 1951, the construction contract was “executed” within statute exempting from sales and use taxes the gross proceeds of sales of tangible personal property delivered under construction contracts “executed” prior to April 1, 1951, notwithstanding that final written contracts were not entered into until April 2, 1951. M. B. Kahn Const. Co. v. Crain (S.C. 1952) 222 S.C. 17, 71 S.E.2d 503. Taxation 3668

4. Machines

The exemption of “machines used in. . . processing tangible personal property” in item (17) applies to machinery used by a poultry farmer in processing, for wholesale, eggs produced on his own farm. (Decided under former statute.) Monroe v. Livingston (S.C. 1968) 251 S.C. 214, 161 S.E.2d 243. Taxation 3656; Taxation 3657

5. Gift wrap

Where a retail seller gift wrapped goods purchased by a customer at no extra charge if a certain quality paper was used, but imposed a charge when the customer chose a higher quality paper, the charge was clearly imposed for the paper and not for the wrapping services, and therefore the charge was exempt from the sales tax under Section 12‑35‑550(14) and South Carolina Tax Commission Regulation 117‑174.154, rather than being taxable under South Carolina Tax Commission Regulation 117‑174.238. (Decided under former statute.) Meyers Arnold, Inc. v. South Carolina Tax Com’n (S.C.App. 1985) 285 S.C. 303, 328 S.E.2d 920.

6. House sales

Where a professional house mover bought old houses, restored them, and resold them, moving them to different lots, the compensation he received for transporting the houses was an exempt sale under Section 12‑35‑550(12). (Decided under former statute.) Cox v. South Carolina Tax Com’n (S.C. 1985) 285 S.C. 224, 329 S.E.2d 739.

7. United States as purchaser

Where the United States is the real purchaser and user of purchased articles their purchase and use is immune from state taxation under the Constitution of the United States. U. S. v. Livingston, 1959, 179 F.Supp. 9, affirmed 80 S.Ct. 1611, 364 U.S. 281, 4 L.Ed.2d 1719, rehearing denied 81 S.Ct. 35, 364 U.S. 855, 5 L.Ed.2d 79.

8. Prosthetic devices

Federal regulation did not provide that orthopaedic prosthetic devices could only be sold by prescription, and thus such devices were not exempt from sales tax; regulation allowed such devices to be sold directly to practitioner, on order of practitioner, or on prescription of practitioner. CareAlliance Health Services v. South Carolina Dept. of Revenue (S.C. 2016) 416 S.C. 484, 787 S.E.2d 475, rehearing denied. Taxation 3652

A prosthetic device is “sold by prescription,” and is thus exempt from sales tax, if (1) the sale requires a prescription; (2) the device is actually sold by prescription; and (3) the device replaces a missing part of the body. CareAlliance Health Services v. South Carolina Dept. of Revenue (S.C. 2016) 416 S.C. 484, 787 S.E.2d 475, rehearing denied. Taxation 3652

Administrative Law Court lacked authority to expand regulatory definition of “prosthetic device” sold by prescription, which devices were exempt from sales tax, as device that “must replace a missing part of the body” to definition consistent with that understood by medical community. Home Medical Systems, Inc. v. South Carolina Dept. of Revenue (S.C. 2009) 382 S.C. 556, 677 S.E.2d 582, rehearing denied. Taxation 3652

9. Nutritional formulas

Enteral nutritional formulas that were sold “over the counter” were not medicine sold by prescription, and thus, were not exempt from sales tax. Home Medical Systems, Inc. v. South Carolina Dept. of Revenue (S.C. 2009) 382 S.C. 556, 677 S.E.2d 582, rehearing denied. Taxation 3652

10. Regulations

Department of Revenue did not willfully, recklessly, or intentionally disregard department published procedures, in violation of former provision of the Taxpayers’ Bill of Rights, when it promulgated regulations requiring a physician’s prescription or written authorization for the diabetic supplies sales tax exemption to apply; taxpayer claimed the Department’s regulations disregarded the diabetic supplies sales tax exemption statute, but disregarding department published procedures did not include the alleged disregard of a statute, and promulgation of a regulation could not be accomplished by willful, reckless, or intentional action of a Department employee. Drummond v. State, Dept. of Revenue (S.C. 2008) 378 S.C. 362, 662 S.E.2d 587. Taxation 3652

11. Justiciability

Plaintiff’s status as a mere taxpayer was insufficient to confer standing on him to bring action challenging constitutionality of the exemptions and caps placed on state’s sales tax; any harm suffered by plaintiff as result of the tax scheme was shared by all taxpayers in the state, and, thus, he had not suffered a concrete and particularized injury. Bodman v. State (S.C. 2013) 403 S.C. 60, 742 S.E.2d 363. States 168.5

12. Sufficiency of evidence

In a proceeding to recover taxes paid under protest, evidence clearly supported the trial court’s finding that a waste‑treatment facility, consisting of various vats, basins, tanks, and other mechanical devices, operated as one single entity, and that the entity was a “machine” within the meaning of Section 12‑35‑550; thus it was exempt from sales tax pursuant to that section. (Decided under former statute.) Hercules Contractors and Engineers, Inc. v. South Carolina Tax Com’n (S.C.App. 1984) 280 S.C. 426, 313 S.E.2d 300.

13. Review

Administrative procedure statute allowing affected persons to petition for declaratory judgment regarding the validity of an agency’s regulation, rather than the Revenue Procedures Act, applied to taxpayer’s request for a declaratory judgment that regulation requiring written authorization for the diabetic supplies sales tax exemption to apply exceeded the Department of Revenue’s authority, and thus taxpayer was not required to exhaust administrative remedies under the Revenue Procedures Act; Revenue Procedures Act could not apply because Administrative Law Court had no authority to rule on validity of regulation. Drummond v. State, Dept. of Revenue (S.C. 2008) 378 S.C. 362, 662 S.E.2d 587. Declaratory Judgment 44; Declaratory Judgment 215

**SECTION 12‑36‑2130.** Exemptions from use tax.

 Exempted from the use tax imposed by Article 13 of this chapter are the sales prices of:

 (1) property the gross proceeds of sales of which are required to be included in the measure of the tax imposed by the provisions of Article 9 of this chapter and on which the tax has been paid by its seller or retailer; and

 (2) tangible personal property and exhibition rentals purchased or leased from sources outside this State by charitable, eleemosynary, or governmental organizations operating museums if the property purchased or leases entered into are directly related to museum purposes.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Editor’s Note

2002 Act 289, Part IB, Paragraph 72.82, provides as follows for fiscal year 2002‑2003:

72.82. (GP: Use Tax Exemption) For the current fiscal year there is exempt from the use tax imposed pursuant to Chapter 36 of Title 12 of the 1976 Code the sales price of tangible personal property purchased for use in private primary and secondary schools, including kindergartens and early childhood education programs, which are exempt from income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code. For the purposes of this item, the Internal Revenue Code means Internal Revenue Code as described in Section 12‑6‑40 of the 1976 Code. This exemption applies for sales occurring after 1995. No refund is due any taxpayer of use tax paid on sales exempted by this paragraph.

Library References

Taxation 3639, 3641 to 3670.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2167 to 2176, 2180 to 2184.

NOTES OF DECISIONS

In general 2

Constitutional issues 1

1. Constitutional issues

Where the United States is the real purchaser and user of purchased articles their purchase and use is immune from state taxation under the Constitution of the United States. U. S. v. Livingston, 1959, 179 F.Supp. 9, affirmed 80 S.Ct. 1611, 364 U.S. 281, 4 L.Ed.2d 1719, rehearing denied 81 S.Ct. 35, 364 U.S. 855, 5 L.Ed.2d 79.

Imposition of a use tax upon the use and storage of trailers by a trucking company within the state was not a tax on interstate commerce, within the meaning of US Const Art 1 Section 8 clause 3, and was thus not subject to the exemption of either Section 12‑35‑820(2) or Section 12‑35‑550(1), where the trailers were transported by the trucking company to a location within the state, alterations and modifications were made on them within the state, they were registered for property tax purposes within the state, the company directed that they pick up freight within the state, and they were stored within the state for approximately two to three weeks. (Decided under former statute.) Senn Trucking Co. v. Wasson (S.C. 1984) 280 S.C. 279, 312 S.E.2d 252, certiorari denied 104 S.Ct. 3537, 467 U.S. 1252, 82 L.Ed.2d 841.

The exemptions from the use tax levy contained in former article did not violate the “privileges and immunities,” due process and equal protection clauses in SC Const, Art 1, Section 5. State ex rel. Roddey v. Byrnes (S.C. 1951) 219 S.C. 485, 66 S.E.2d 33.

2. In general

Double taxation is avoided by provision in this section [former Code 1962 Section 65‑1422] and section Code 1962 Section 65‑1425 that the user shall be relieved of liability for the use tax on property subject to the sales tax and on which the tax has been paid, or when the retailer has given the purchaser a receipt. McJunkin Corp. v. City of Orangeburg (C.A.4 (S.C.) 1956) 238 F.2d 528.

ARTICLE 25

General Provisions

**SECTION 12‑36‑2510.** Certificates allowing taxpayer to purchase tangible personal property tax free and be liable for taxes; procedures when claiming exemption.

 (A)(1) Notwithstanding other provisions of this chapter, the department, at its discretion, may issue or authorize for the efficient administration of the sales and use tax law any type of certificate allowing a taxpayer to purchase tangible personal property tax free and be liable for any taxes.

 (2) In addition to any other type of certificate the department considers necessary to issue, the department may issue at its discretion:

 (a) Direct Pay Certificate: a direct pay certificate allows its holder to make all purchases tax free and to report and pay directly to the department any taxes due. The holder of a direct pay certificate is liable for any taxes due. If an exemption or exclusion is not applicable, the tax is due upon the withdrawal, use, or consumption of the tangible personal property purchased with the certificate.

 (b) Exemption Certificate: an exemption certificate, as opposed to allowing its holder to make all purchases tax free, allows its holder to make only certain purchases tax free such as machinery, electricity, or raw materials. The holder of an exemption certificate is liable for any taxes due. If an exemption or exclusion is not applicable, the tax is due upon purchase, or upon the withdrawal, use, or consumption of the tangible personal property purchased with the certificate if the application of the exemption or exclusion cannot be determined at the time of purchase.

 (B) To reduce the complexity and administrative burden of transactions exempt from sales or use tax, the following provisions must be followed when a purchaser claims an exemption by use of an exemption certificate:

 (1) the seller shall obtain at the time of the purchase any information determined necessary by the department, including the reason the purchaser is claiming a tax exemption or exclusion;

 (2) the department, at its discretion, may utilize a system where the purchaser exempt from the payment of the tax is issued an identification number which must be presented to the seller at the time of the sale;

 (3) the seller shall maintain proper records of exempt or excluded transactions and provide them to the department when requested and in the form requested by the department.

 (C) A seller that complies with the provisions of this section is relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption or exclusion by use of a certificate, provided the seller did not fraudulently fail to collect or remit the tax, or both, or solicit a purchaser to participate in an unlawful claim of an exemption. The liability for tax shifts to the purchaser who improperly claimed the exemption or exclusion by use of the certificate.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 2005 Act No. 145, Section 30.A, eff October 1, 2005; 2007 Act No. 110, Section 25, eff June 21, 2007; 2007 Act No. 116, Section 31, eff June 28, 2007, applicable for tax years beginning after 2007.

Library References

Taxation 3648.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2172.

**SECTION 12‑36‑2520.** Tax liability when property delivered out of state; violations.

 If the seller delivers tangible personal property to the purchaser in a state other than South Carolina and receives from the purchaser a statement, given under oath, that the property was purchased for storage, use, or consumption outside of South Carolina and that the property will not be returned for storage, use, or consumption in South Carolina, the sales or use tax due on the transactions will be transferred to the purchaser if the statement contains a description of the property, the date of sale, the amount of the purchase price, and the city and state of delivery. The statement must be retained by the seller and, upon request forwarded to the department. The department may forward a copy of the statement to the taxing authority of the state of delivery. If the property is subsequently stored, used, or consumed in this State, the purchaser, in addition to the sales or use tax, shall pay a penalty in an amount equal to fifty percent of the tax.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3641.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2167.

**SECTION 12‑36‑2530.** Documentation of entitlement to tax exemption for goods to be delivered out of state; tax on property delivered in state for removal from state by purchaser.

 The department may require all retailers in this State making retail sales exempt pursuant to Section 12‑36‑2120(36) to furnish to the department copies of all invoices or suitable substitutes containing the name and address of the purchaser, a brief description of the goods sold, and the total amount of the sale regarding each retail sale of five hundred dollars or greater, not aggregated by amount over any period of time, with their monthly returns. Where, pursuant to a retail sale, tangible personal property is delivered in this State to the buyer or to an agent of the buyer other than a carrier, the retail sales tax applies notwithstanding that the buyer may transport subsequently the property out of the State.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3641, 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2167, 2189.

**SECTION 12‑36‑2540.** Duty to keep records and books.

 (A) Every person engaging in any business, for which a privilege or excise tax is imposed by this chapter, shall keep and preserve suitable records of the business, as considered necessary by the department, to determine the amount of tax due under this chapter. The taxpayer shall keep and preserve records, such as purchase invoices, for three years. Invoices must bear the name and address of the vendor.

 (B) Any person selling both at wholesale and at retail shall keep books which separately show the gross proceeds of wholesale sales and the gross proceeds of retail sales. If the records are not separately kept, all sales must be considered retail sales.

 (C) Every seller and every person storing, using, or otherwise consuming, in this State, tangible personal property purchased from a retailer shall keep records, receipts, invoices, and other pertinent papers in the form the department requires.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

Attorney General’s Opinions

Information made privileged by state law under former Sections 12‑7‑1680 and 12‑35‑1530 is nonetheless subject to disclosure under subpoena of Federal Grand Jury or by order of Federal Court. 1985 Op Atty Gen, No. 85‑125, p 339 (October 28, 1985) 1985 WL 166093.

The obvious legislative purpose of this section [former Code 1962 Section 65‑1477] is to give protection to one required to render a sales or use tax report or return to the Tax Commission. 1963‑64 Op Atty Gen, No 1748, p 250 (October 28, 1964).

**SECTION 12‑36‑2550.** Use of overpayment of tax to offset underpayment or penalty.

 Notwithstanding the provisions of this chapter, the department may offset overpayments for a period or periods, together with interest on the overpayments, against:

 (1) underpayments for another period or periods; and

 (2) penalties and interest on the underpayments.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

Attorney General’s Opinions

The Tax Commission has the duty to examine a taxpayer’s records to establish a sales or use tax payment before authorizing the refund thereof under Section 83 of Act 644, Acts of 1978. (Decided under former law.) 1979 Op Atty Gen, No 79‑46, p 63 (March 12, 1979) 1979 WL 29052.

NOTES OF DECISIONS

In general 1

1. In general

There is grave doubt of the existence of a right to recover interest in an action for refund of sales and use taxes, and therefore, the legal remedy afforded taxpayers in South Carolina is not plain or adequate. (Decided under former statute.) U. S. v. Livingston, 1959, 179 F.Supp. 9, affirmed 80 S.Ct. 1611, 364 U.S. 281, 4 L.Ed.2d 1719, rehearing denied 81 S.Ct. 35, 364 U.S. 855, 5 L.Ed.2d 79.

**SECTION 12‑36‑2560.** Payment of tax on sales made on installment basis.

 On all sales of retailers liable for the tax imposed by Article 9 of this chapter (sales tax) made on an installment basis which conform to the provisions of the Uniform Commercial Code in which the retailer takes a security interest, the vendor may elect to include in the return only the portion of the sales price actually received by the retailer during the taxable period or to include the entire sales price in the return for the taxable period during which the sale was consummated. Having once elected either method of reporting the sales, the taxpayer must continue unless and until permission has been received from the department to make a change. Nothing in this section may be construed to permit delay in reporting sales under other terms of credit or cash sales.

 The department may, for any cause, require a taxpayer to include in his returns the entire sales price of articles sold on an installment basis which conforms to the provisions of the Uniform Commercial Code in which the retailer takes a security interest.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1992 Act No. 361, Section 16(H).

Library References

Taxation 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

Attorney General’s Opinions

Where the purchaser defaults in a conditional sales contract and the seller acquires possession of the property and executes another contract with a third person for the balance due the seller in the initial contract, the subsequent transaction is taxable as a retail sale for sales and use tax purposes. (Decided under former Section 12‑35‑540.) 1966‑67 Op Atty Gen, No 2375, p 224 (October 10, 1967) 1967 WL 8683.

**SECTION 12‑36‑2570.** Time when tax payment due; monthly report.

 (A) The taxes imposed under the provisions of this chapter, except as otherwise provided, are due and payable in monthly installments on or before the twentieth day of the month following the month in which the tax accrues.

 (B) On or before the twentieth day of each month, every person on whom the taxes under this chapter are imposed shall render to the department, on a form prescribed by it, a true and correct statement showing, by location, the gross proceeds of wholesale and retail sales of his business, and sales price of the property purchased for storage, use, or consumption in this State, together with other information the department may require.

 (C) At the time of making a monthly report, the person shall compute the taxes due and pay to the department the amount of taxes shown to be due. A return is considered to be timely filed if the return is mailed and has a postmark dated on or before the date the return is required by law to be filed.

 (D) The department may permit the filing of returns every twenty‑eight days. These returns must be filed within twenty days following the period covered by the return.

 (E) The department may enter into an agreement with a taxpayer which allows the taxpayer to remit the tax on statistical factors as set forth in the agreement. This method of reporting only applies to purchases by the taxpayer for its use, storage, or consumption, and not to purchases by the taxpayer for resale.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1993 Act No. 164, Part II, Section 103A.

CROSS REFERENCES

Discount allowed on amount of sales or use tax owed to state upon timely filing and payment of tax, see Section 12‑36‑2610.

Library References

Taxation 3688, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2206.

Attorney General’s Opinions

The Tax Commission is authorized by former Section 12‑54‑20 and by Section 12‑54‑70 to charge interest on sales tax payments and estimated sales tax payments where such payments are paid after the due date even if such are paid within an extension period granted by Section 12‑54‑70. 1986 Op Atty Gen, No. 86‑110, p 330 (October 27, 1986) 1986 WL 192068.

The penalty for failure to prepay sales tax is five percent per month until the tax is paid, not however, exceeding twenty‑five percent. The penalty is upon the difference in the amount of the prepayment that was due and the amount actually paid. The failure to make the prepayment or to pay the same in full does not bar the discount allowed for the full and timely payment of the tax due on the regular sales tax return. (Decided under former law.) 1986 Op Atty Gen, No. 86‑46, p 137 (March 31, 1986) 1986 WL 192006.

South Carolina Tax Commission is without authority to delegate duty to collect delinquent taxes to independent contractors. (Decided under former law.) 1984 Op Atty Gen, No. 84‑1, p 16 (January 4, 1984) 1984 WL 159810.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

There is a grave doubt of the existence of a right to recover interest in an action for refund of sales and use taxes, and therefore, the legal remedy afforded taxpayers in South Carolina is not plain or adequate. (Decided under former statute.) U. S. v. Livingston, 1959, 179 F.Supp. 9, affirmed 80 S.Ct. 1611, 364 U.S. 281, 4 L.Ed.2d 1719, rehearing denied 81 S.Ct. 35, 364 U.S. 855, 5 L.Ed.2d 79.

Former Section 12‑54‑80 would not be applied retroactively to validate an assessment which was untimely under former Section 12‑35‑1370. South Carolina Nat. Bank v. South Carolina Tax Com’n (S.C. 1989) 297 S.C. 279, 376 S.E.2d 512.

A food service that sold meals to sponsor organizations that conducted federally supported summer lunch programs for indigent children was properly characterized as a retail seller by the tax commission and assessed for sales taxes where no sale was ever contemplated or was ever made by the sponsor organizations to either the children or the Department of Agriculture; accordingly, the last transaction for a consideration involved the food service as vendor and the organizations as vendees. (Decided under former statute.) ARA Services, Inc. v. South Carolina Tax Commission (S.C. 1978) 271 S.C. 146, 246 S.E.2d 171, certiorari denied 99 S.Ct. 725, 439 U.S. 1048, 58 L.Ed.2d 707.

Remedy under this section [former Code 1962 Section 65‑1462] exists in favor of person against whom taxes are assessed. Stephens v. Hendricks (S.C. 1955) 228 S.C. 458, 90 S.E.2d 632.

The debt to the State arises upon each sale, and the deferment of the time of payment until the twentieth day of the next month is merely a grace period for payment. (Decided under former statute.) Stephens v. Hendricks (S.C. 1955) 228 S.C. 458, 90 S.E.2d 632.

This section [former Code 1962 Section 65‑1466] does not provide any remedy for a citizen to test title and right of possession of his property when he owes no tax and his property has been illegally seized for the taxes of a third party, and to test such title and right to possession of his property, claim and delivery is the proper remedy. Stephens v. Hendricks (S.C. 1954) 226 S.C. 79, 83 S.E.2d 634.

The language of this section [Code 1962 Section 65‑1466] refers only to payment of taxes by a person charged with the payment thereof, a tax debtor, and there is no reference therein to payment by a person of taxes charged against a third party. Stephens v. Hendricks (S.C. 1954) 226 S.C. 79, 83 S.E.2d 634.

2. Constitutional issues

A sales tax levied on the sale of motor trucks by a South Carolina corporation engaged in the retail sale of large trucks to a common carrier licensed for both intrastate and interstate motor freight carriage, and delivered in South Carolina, was a tax on the sale of the trucks and not on the interstate activity of the trucks, and was not prohibited by the commerce clause of the United States Constitution. (Decided under former statute.) Burton Intern., Inc. v. Wasson (S.C.App. 1985) 284 S.C. 571, 327 S.E.2d 373. Commerce 74.5(2); Taxation 3642

**SECTION 12‑36‑2580.** Special authorization to pay tax quarterly.

 When the total tax for which any person is liable under this chapter does not exceed one hundred dollars for any month, a quarterly return and remittance, instead of a monthly return, may be made on or before the twentieth day of the month following the end of the quarter for which the tax is due, when specifically authorized by the department and under rules and regulations prescribed or promulgated by the department.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

**SECTION 12‑36‑2590.** Department authorized to require returns and payment for other than monthly periods.

 The department, if it considers it necessary, may require returns and payment of the tax for other than monthly periods.

HISTORY: 1990 Act No. 612, Part II, Section 74A.

Library References

Taxation 3688, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2206.

**SECTION 12‑36‑2610.** Discount for timely payment of tax.

 When a sales or use tax return required by Section 12‑36‑2570 and a local sales and use tax law administered and collected by the department on behalf of a local jurisdiction is filed and the taxes due on it are paid in full on or before the final due date, including any date to which the time for making the return and paying the tax has been extended pursuant to the provisions of Section 12‑54‑70, 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 of 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 department. The discount permitted a taxpayer under this section may not exceed three thousand dollars during any one state fiscal year. However, for taxpayers filing electronically, the discount may not exceed three thousand one hundred dollars. A person making sales into this State who cannot be required to register for sales and use tax under applicable law but who nevertheless voluntarily registers to collect and remit use tax on items of tangible personal property sold to customers in this State is entitled to a discount on returns filed as otherwise provided in this section not to exceed ten thousand dollars during any one state fiscal year.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1992 Act No. 501, Part II, Section 36A; 1993 Act No. 164, Part II, Section 98A; 2002 Act No. 363, Section 4A, eff July 1, 2002; 2005 Act No. 161, Section 28, eff June 9, 2005.

CROSS REFERENCES

Retention of percentage of fees collected in lieu of discount allowed under this section, in connection with sale and delivery by wholesalers of lead‑acid batteries in the state, see Section 44‑96‑180.

Retention of percentage of fees collected in lieu of discount allowed under this section, in connection with sale and delivery by wholesalers of white goods, see Section 44‑96‑200.

Retention of percentage of fees collected in lieu of discount allowed under this section, in connection with sales of new tires by wholesalers to ultimate consumers, see Section 44‑96‑170.

Retention of percentage of fees collected in lieu of discount allowed under this section, in connection with wholesale sales of, motor oil or similar lubricants and imports into the state of ex‑tax motor oil or similar lubricants, see Section 44‑96‑160.

Library References

Taxation 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2206.

Attorney General’s Opinions

The penalty for failure to prepay sales tax is five percent per month until the tax is paid, not however, exceeding twenty‑five percent. The penalty is upon the difference in the amount of the prepayment that was due and the amount actually paid. The failure to make the prepayment or to pay the same in full does not bar the discount allowed for the full and timely payment of the tax due on the regular sales tax return. (Decided under former law.) 1986 Op Atty Gen, No 86‑46, p 137 (March 31, 1986) 1986 WL 192006.

**SECTION 12‑36‑2620.** Sales and use taxes composed of two components.

 The taxes imposed by Sections 12‑36‑910, 12‑36‑920(B), 12‑36‑1310, and 12‑36‑1320 are composed of two taxes as follows:

 (1) a four percent tax, which must be credited as provided in Section 59‑21‑1010(A); and

 (2) a one percent tax, which must be credited as provided in Section 59‑21‑1010(B). The one percent tax specified in this item does not apply to sales to an individual eighty‑five years of age or older purchasing tangible personal property for his own personal use, if at the time of sale, the individual requests the one percent exclusion from tax and provides the retailer with proof of age.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 2001 Act No. 89, Section 50A, eff July 1, 2001.

CROSS REFERENCES

Certain portions of revenue derived pursuant to this section from tax on catalog sales to go to Higher Education Sales Tax Fund, see Section 59‑101‑360.

Library References

Taxation 3602.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2142, 2145.

**SECTION 12‑36‑2630.** Seven percent sales tax on accommodations for transients composed of three components.

 The tax imposed by Section 12‑36‑920(A) is composed of three taxes as follows:

 (1) a four percent tax which must be credited as provided in Section 59‑21‑1010(A); and

 (2) a one percent tax, which must be credited as provided in Section 59‑21‑1010(B). The one percent tax specified in this item (2) does not apply to sales to an individual eighty‑five years of age or older purchasing tangible personal property for his own personal use, if at the time of sale, the individual requests the one percent exclusion from tax and provides the retailer with proof of age; and

 (3) a two percent local accommodations tax, which must be credited to the political subdivisions of the State in accordance with Chapter 4, Title 6. The proceeds of this tax, less the department’s actual increase in the cost of administration and the expenses of the Tourism Expenditure Review Committee established pursuant to Section 6‑4‑35, must be remitted quarterly to the municipality or the county in which it is collected. The two percent tax provided by this item may not be increased except upon approval of two‑thirds of the membership of each House of the General Assembly. However, the tax may be decreased or repealed by a simple majority of the membership of each House of the General Assembly.

 The tax imposed by Section 12‑36‑920 must be billed and paid in a single item listed as tax, without itemizing the taxes referred to in this section.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 2001 Act No. 74, Section 3C, eff July 18, 2001; 2001 Act No. 89, Section 50B, eff July 1, 2001.

CROSS REFERENCES

Allocation of funds collected pursuant to subsection (3) of this section, see Sections 6‑4‑10, 6‑4‑20.

Library References

Innkeepers 4.

Westlaw Topic No. 213.

C.J.S. Inns, Hotels, and Eating Places Sections 14 to 16.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 20, Taxes.

**SECTION 12‑36‑2640.** Casual excise tax composed of two components.

 The tax imposed by Section 12‑36‑1710 is composed of two taxes as follows:

 (1) a four percent tax which must be credited to the general fund of the State; and

 (2) a one percent tax which must be credited as provided in Section 59‑21‑1010(B). The one percent tax specified in this item does not apply to the issuance of certificates of title or other proof of ownership to an individual eighty‑five years of age or older titling or registering a motor vehicle, motorcycle, boat, motor, or airplane for his own personal use, if at the time of sale, the individual requests the one percent exclusion from tax and provides the retailer with proof of age.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 2001 Act No. 89, Section 50C, eff July 1, 2001.

Library References

Taxation 3678.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177.

**SECTION 12‑36‑2645.** Taxes applicable to proceeds of 900/976 telephone service; tax rate; disposition of revenues.

 The sales and use taxes imposed by this chapter also extend to gross proceeds accruing or proceeding from the business of providing 900/976 telephone service except that the applicable rate of the tax is ten percent. All revenues derived from the tax imposed by this section must be credited to the general fund of the State.

HISTORY: 1992 Act No. 501, Part II, Section 33A.

CROSS REFERENCES

Sales and use tax regulations, communications services, see S.C. Code of Regulations R. 117‑329.

Library References

Taxation 3658, 3713.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2170, 2222.

**SECTION 12‑36‑2646.** Retailers to post notice of tax exclusion available to individuals 85 years of age or over; penalties.

 (A) Retailers shall post a sign at each entrance or each cash register which advises individuals eighty‑five years of age or older of the one percent exclusion from tax available under Sections 12‑36‑2620, 12‑36‑2630, and 12‑36‑2640.

 (B) A retailer who fails to post the required signs is subject to a penalty of up to one hundred dollars for each month or portion of the month the sign or signs are not posted. Continued failure to post the signs after a written warning from the Department of Revenue may result in revocation of the retailer’s retail license in accordance with Section 12‑54‑90. Failure to post the signs does not give rise to a cause of action by an individual eighty‑five years of age or older who failed to request the exclusion and provide proof of age at the time of sale.

HISTORY: 2001 Act No. 89, Section 50(D), eff August 15, 2001.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑36‑2647.** Repealed.

HISTORY: Former Section, titled Tax revenue on sales, use, and casual excise taxes; distribution, had the following history: 2013 Act No. 98, Section 5.B, eff June 24, 2013; 2016 Act No. 275 (S.1258), Section 85, eff July 1, 2016. Repealed by 2017 Act No. 40, Section 7.D, eff July 1, 2017.

**SECTION 12‑36‑2650.** Taxes in this chapter not to supersede any other taxes, licenses, or charges.

 The taxes imposed by this chapter are in addition to all other taxes, licenses, and charges and no provisions of this chapter may be construed to relieve a person from the payment of a license or privilege tax now or hereafter imposed by law.

HISTORY: 1990 Act No. 612, Part II, Section 74A; 1992 Act No. 361, Section 16(I).

**SECTION 12‑36‑2660.** Administration and enforcement of chapter.

 The Department of Revenue shall administer and enforce the provisions of this chapter.

HISTORY: 1992 Act No. 361, Section 16(L); 1993 Act No. 181, Section 199.

Library References

Taxation 3635.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2153, 2158.

Notes of Decisions

Federal courts 1

1. Federal courts

Enforcement of Colorado statutory notice and reporting requirements for retailers that did not collect taxes on sales to Colorado purchasers was not “assessment” within scope of Tax Injunction Act (TIA), as would provide basis for divesting district court of jurisdiction over action by association of retailers that sought to enjoin enforcement of requirements; challenged notices of use‑tax liability and reports to purchasers and state revenue department fell within information‑gathering phase of tax administration process, which preceded assessment, or official recording of liability. Direct Marketing Ass’n v. Brohl, 2015, 135 S.Ct. 1124, 191 L.Ed.2d 97, on remand 814 F.3d 1129. Federal Courts 2036

Enforcement of Colorado statutory notice and reporting requirements for retailers that did not collect taxes on sales to Colorado purchasers was not “levy” within scope of Tax Injunction Act (TIA), as would provide basis for divesting district court of jurisdiction over action by association of retailers that sought to enjoin enforcement of requirements; challenged notices of use‑tax liability and reports to purchasers and state revenue department fell within information‑gathering phase of tax administration process, whereas levy was later official action imposing, determining amount of, or securing payment on tax. Direct Marketing Ass’n v. Brohl, 2015, 135 S.Ct. 1124, 191 L.Ed.2d 97, on remand 814 F.3d 1129. Federal Courts 2036

Enforcement of Colorado statutory notice and reporting requirements for retailers that did not collect taxes on sales to Colorado purchasers was not “collection” within scope of Tax Injunction Act (TIA), as would provide basis for divesting district court of jurisdiction over action by association of retailers that sought to enjoin enforcement of requirements; challenged notices of use‑tax liability and reports to purchasers and state revenue department fell within information‑gathering phase of tax administration process, whereas collection was subsequent act of obtaining or receiving payment of taxes due. Direct Marketing Ass’n v. Brohl, 2015, 135 S.Ct. 1124, 191 L.Ed.2d 97, on remand 814 F.3d 1129. Federal Courts 2036

Injunction against enforcement of Colorado statutory notice and reporting requirements for retailers that did not collect taxes on sales to Colorado purchasers would not “restrain” assessment, levy, or collection of tax under Tax Injunction Act (TIA), as would divest district court of jurisdiction over action by association of retailers that sought to enjoin enforcement of requirements to provide notices of use‑tax liability and send reports to purchasers and state revenue department; prohibited restraints under TIA were orders that stopped, rather than merely inhibited, acts of assessment, levy, and collection. Direct Marketing Ass’n v. Brohl, 2015, 135 S.Ct. 1124, 191 L.Ed.2d 97, on remand 814 F.3d 1129. Federal Courts 2036

**SECTION 12‑36‑2670.** Persons permitted to administer oaths and take acknowledgments.

 The director or his designee may administer an oath to a person or take the acknowledgement of a person with respect to a return or report required by this title or the regulations of the department.

HISTORY: 1992 Act No. 361, Section 16(L); 2000 Act No. 399, Section 3(G), eff August 17, 2000.

**SECTION 12‑36‑2680.** Exemption certificate; exempt sale.

 The department shall prescribe an exemption certificate for use by persons purchasing items exempt pursuant to items (5), (6), (7), (16), (18), (32), and (44) of Section 12‑36‑2120. This exemption certificate may be presented upon each purchase by the holder, or the retailer may keep a copy of the certificate on file. When an exempt sale is made pursuant to a certificate on file, the purchaser must note on the purchase invoice the exempt items and state that the items are to be used for exempt purposes. When the purchase order meets the requirements of this section, the liability for any tax determined to be due is solely the purchaser’s.

HISTORY: 1994 Act No. 497, Part II, Section 127A; 1995 Act No. 145, Part II, Section 107A; 2000 Act No. 399, Section 3(C)(2), eff August 17, 2000.

Editor’s Note

2000 Act No. 399, Section 3.Z., provides, in pertinent part, as follows:

“This section takes effect upon approval by the Governor, or as otherwise stated, except that subsection C. applies to sales occurring after the date of approval by the Governor ....”

**SECTION 12‑36‑2690.** Role of distribution facility in determining physical presence in state for sales and use tax purposes.

 (A) Notwithstanding another provision of this chapter, owning or utilizing a distribution facility within South Carolina is not considered in determining whether the person has a physical presence in South Carolina sufficient to establish nexus with South Carolina for sales and use tax purposes.

 (B) For purposes of this section, a distribution facility is defined in Section 12‑6‑3360.

HISTORY: 2005 Act No. 157, Section 2, eff June 10, 2005, applicable for taxable years beginning January 1, 2006.

Editor’s Note

2005 Act No. 157, Section 5, as amended by 2006 Act No. 389, Section 4, provides as follows:

“(A) The General Assembly finds that many tax incentives outlive their usefulness and should exist only for a time certain. It is the intent of the General Assembly to provide for a sunset provision on each tax incentive, including credits and exemptions, enacted by this act.

“(B) Each tax incentive, including credits and exemptions, enacted by this act shall be repealed for tax years beginning after five years from the date of enactment, unless a different time frame is otherwise provided herein, but this repeal does not apply to the small business targeted jobs tax credit allowed pursuant to Section 12‑6‑3360(C)(2), as amended by this act.”

Library References

Taxation 3609.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2149, 2155.

**SECTION 12‑36‑2691.** Distribution facility nexus; criteria for and duration of provisions; use tax notification and payment.

 (A) Notwithstanding another provision of this chapter, owning, leasing, or utilizing a distribution facility, including a distribution facility of a third party or an affiliate, within South Carolina is not considered in determining whether the person has a physical presence in South Carolina sufficient to establish nexus with South Carolina for sales and use tax purposes.

 (B) For purposes of this section:

 (1) “distribution facility” means an establishment where shipments of tangible personal property are stored and processed for delivery to customers and no retail sales of the property are made. The definition of “distribution facility” provided in Section 12‑6‑3360(M)(8) allowing limited retail sales at such a facility specifically do not apply with respect to a “distribution facility” as defined for purposes of this section;

 (2) “affiliate” means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person;

 (3) a person controls another person if that person holds a fifty percent ownership interest in the other person.

 (C) This section only applies to either a person who, or a person who has an affiliate who:

 (1) places a distribution facility in service after December 31, 2010, and before January 1, 2013;

 (2) makes, or causes to be made through a third party, a capital investment of at least one hundred twenty‑five million dollars after December 31, 2010, and before December 31, 2013;

 (3) creates at least two thousand full‑time jobs and with a comprehensive health plan for those employees, after December 31, 2010, and before December 31, 2013. For purposes of this item, “full‑time” and “new job” have the same meaning as provided in Section 12‑6‑3360; and

 (4) after meeting the requirements of item (3), maintains at least one thousand five hundred full‑time jobs and with a comprehensive health plan for those employees until January 1, 2016.

 (D) This section no longer applies on the earlier of:

 (1) January 1, 2016;

 (2) when the person fails to meet the requirements provided in subsection (C) of this section; or

 (3) the effective date of a law enacted by the United States Congress that allows a state to require that its sales tax be collected and remitted even if the taxpayer does not have substantial nexus with that state.

 (E)(1) A person to whom this section applies who makes a sale through the person’s Internet website shall notify a purchaser in a confirmation email that the purchaser may owe South Carolina use tax on the total sales price of the transaction and include in the email an Internet link to the Department of Revenue’s website that allows the purchaser to pay the use tax. The notice must include language that is substantially similar to the following:

“YOU MAY OWE SOUTH CAROLINA USE TAX ON THIS PURCHASE BASED ON THE TOTAL SALES PRICE OF THE PURCHASE. YOU MAY VISIT WWW.SCTAX.ORG TO PAY THE USE TAX OR YOU MAY REPORT AND PAY THE TAX ON YOUR SOUTH CAROLINA INCOME TAX FORM.”

 (2) The Department of Revenue shall cooperate with any person to whom this section applies and provide the person with the information and assistance necessary to comply with the provisions of this subsection and the means to link to the applicable portion of the department’s website. The department shall develop the webpage required by item (1) and develop a means to allow the purchaser to pay any required tax through the webpage. The department shall include on the webpage a table of the various sales tax rates of the State by location that permits the person to calculate the tax based on the total sales price and delivery location.

 (3)(a) A person to whom this section applies also shall by February first of each year provide to each purchaser to whom tangible goods were delivered in this State a statement of the total sales made to the purchaser during the preceding calendar year. The statement must contain language substantially similar to the following:

“YOU MAY OWE SOUTH CAROLINA USE TAX ON PURCHASES YOU MADE FROM US DURING THE PREVIOUS TAX YEAR. THE AMOUNT OF TAX YOU MAY OWE IS BASED ON THE TOTAL SALES PRICE OF [INSERT TOTAL SALES PRICE] THAT MUST BE REPORTED AND PAID WHEN YOU FILE YOUR SOUTH CAROLINA INCOME TAX RETURN UNLESS YOU HAVE ALREADY PAID THE TAX.”

 The statement must not contain any other information that would indicate, imply, or identify the class, type, description, or name of the products purchased. Any information that would indicate, imply, or identify the class, type, description, or name of the products purchased is considered strictly confidential.

 (b) The statement may be provided by first class mail or email.

HISTORY: 2011 Act No. 32, Section 3, eff June 8, 2011.

CROSS REFERENCES

Notification required, see Section 12‑36‑2692.

Library References

Taxation 3609.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2149, 2155.

**SECTION 12‑36‑2692.** Notification required.

 (A) Each person to whom Section 12‑36‑2691 applies shall provide to its customers readily visible notification on invoices or other similar documentation that use tax is imposed on its sales and must be paid by the purchaser, unless otherwise exempt, on the storage, use, or consumption of the tangible personal property in this State.

 (B) A person complies with the notice requirement contained in subsection (A) if he provides a prominent linking notice on invoices or other similar documentation that directs its customers to information regarding the customer’s use tax payment responsibilities. A linking notice complies with the provisions contained in this subsection if the notice reads as follows: “See important sales tax information regarding the tax that you may owe directly to your state of residence.”

 (C) A person that is required to provide a linking notice pursuant to subsection (B) also must provide this notification on its Internet website and catalog.

HISTORY: 2011 Act No. 32, Section 4, eff June 8, 2011.

**SECTION 12‑36‑2695.** Sales taxes or admission taxes; boundary clarification.

 Any business that is required to collect or pay sales and use taxes or admissions taxes whose business location changes from North Carolina to South Carolina as a result of the boundary clarification, as contained in the amendments to Section 1‑1‑10, effective January 1, 2017, is required to obtain a South Carolina retail license or admissions tax license for that location before January 1, 2017, and begin collecting and paying South Carolina sales and use taxes or admissions taxes on January 1, 2017. The retailer must apply for a retail or admissions tax license prior to January 1, 2017, and indicate on the license application the date the taxpayer anticipates beginning to collect sales, use, or admissions taxes is January 1, 2017.

HISTORY: 2016 Act No. 270 (S.667), Section 11, eff January 1, 2017.