



Sales & Use Tax for
Government & Municipalities

Sales Tax

- §12-36-910(A) reads:

A sales tax, equal to [six] 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.

Use Tax

- §12-36-1310(A) reads:

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 [six] percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

The Basics of Sales & Use Tax

- Definitions
 - Tangible Personal Property (TPP)
 - Includes certain specific services and intangibles
 - Laundering and dry cleaning
 - Electricity
 - Communications services
 - Software, in certain circumstances

The Basics of Sales & Use Tax

- Definitions
 - Sale or purchase
 - transfer of title or possession, incl. rentals, leases and licenses to use
 - Sale at retail
 - sale of TPP to end-user or consumer of TPP, incl. rentals, leases and licenses to use
 - Purchase at retail
 - purchases of TPP by end-user or consumer of TPP

The Basics of Sales & Use Tax

- Definitions
 - Gross proceeds of sale
 - total amount proceeding or accruing from sales of a business & is subject to sales tax
 - Storage
 - keeping or retaining TPP in SC that has been bought at retail
 - Use
 - exercising any right or power over TPP incident to ownership, or simply using the stuff

Withdrawal for Use

- Retailer is liable for sales tax upon fair market value (FMV) of TPP, previously purchased at wholesale, withdrawn from inventory and used or consumed in connection with the business
- Taxed at FMV, not below cost



Gross Proceeds of Sale

- Examples include (not limited to):
 - Delivery or transportation charges, when
 - F.O.B. destination
 - Seller uses own vehicle
 - Seller effects delivery from factory directly to customer
 - Fabrication labor
 - Installation labor
 - When not separately stated
 - Finance and carrying charges

Gross Proceeds of Sale

- Does not include:
 - Cash discount allowed and taken
 - Property returned for full refund
 - Trade-in
 - Delivery or transportation charges
 - F.O.B. Origin
 - Installation labor
 - Separately stated

The Basics of Use Tax

- Use tax is imposed on the purchaser and applies to purchases of TPP from out-of-state retailers for use, storage or consumption in SC, including:
 - purchases from retailers made via the Internet (retailers' websites and retailers' sales on auction sites)
 - purchases through out-of-state catalog companies or when visiting another state or another country

The Basics of Use Tax

- Use tax is due on purchases from sellers such as:
 - eBay
 - Amazon (through December 31, 2015)
 - Land's End
 - HSN

Freight and Delivery Charges

- See SC Reg. 117-310 and Revenue Ruling #98-8
- Freight charges – separately stated
 - FOB destination – included in gross proceeds of sale and sales price, therefore subject to sales and use tax
 - FOB origin – not included in gross proceeds of sale and sales price, therefore not subject to sales and use tax
 - Shipping terms not defined – FOB destination is implied
- Delivery charges
 - included in gross proceeds of sale and sales price, therefore subject to sales and use tax

The Basics of Use Tax

- Total use tax includes applicable local taxes.
- Regarding the local taxes, they are determined by where TPP will be used, stored or consumed, regardless of where the sales takes place
 - Example: TPP is shipped from a TN retailer into Charleston County where it will be stored, used or consumed - 6% state, 1% local option, ½% transportation and 1% education capital improvement
 - (8½% total) is due as **use tax** on that purchase

The Basics of Use Tax

- SC will allow a credit against the SC use tax for another state's sales and local taxes, *provided*:
 - TPP purchased in one of other 49 states;
 - Other state's tax must be ***legally due and paid; AND***
 - Taxpayer has proof the other state's tax was legally due *and* paid.

Scenario

- Tangible Personal Property (TPP) purchased from an Augusta retailer.
 - SC purchaser *goes to* Augusta to buy the TPP and pays 7% GA state and local taxes.
 - Returns to SC with TPP and consumes the TPP in Aiken County.
 - What is owed to South Carolina?

Scenario- Answer

SC use tax due	6%
Aiken County local taxes	2%
Total use tax due, before credit	8%
Less GA tax <i><u>legally due and paid</u></i>	7%
SC use tax due	1%

Scenario

- Tangible Personal Property (TPP) is purchased from a Savannah retailer.
 - Savannah retailer delivers the TPP into Beaufort County in its delivery truck.
 - SC purchaser pays 7% GA state and local taxes to the retailer on the purchase.
 - TPP is consumed (used) in Beaufort County.
 - What is owed to South Carolina?



Scenario- Answer

SC use tax due	6%
Beaufort County local taxes	0%
Total SC use tax due	6%

No credit against SC use tax for the 7% GA tax paid because the 7% GA tax was not legally due.

- Delivery into SC by a common carrier or retailer's delivery truck changes the entire nature of the transaction.
- The sale was deemed to have been made in SC, not GA, and TPP was consumed or used in Beaufort County.

Purchaser's Certificate of Registration

- required for those persons *not making retail sales*
- who purchase tangible personal property from *outside* South Carolina
- and *store, use or consume* the property *in* South Carolina

Purchaser's Certificate of Registration

- Apply using MyDORWay
- Apply using form SCDOR-111
 - Mail SCDOR-111
 - In-person at Taxpayer Service Centers
- No charge for a Purchaser's Certificate of Registration



Individuals 85 Years and Older

- Excluded from 1% of the 6% Sales and Use Tax
 - Taxed at 5% state rate
 - Local tax still applies
- Retailers must post sign
 - See SC Revenue Ruling #08-5

**INDIVIDUALS 85 YEARS
AND OLDER**

You are entitled to a 1% state sales tax reduction on items purchased for your personal use. You must ask for the reduction and present proof of your age at the cash register.

Local Taxes

- Local Option Tax
- Transportation Tax
- Capital Projects Tax
- School District Tax/Education Capital Improvement Tax
- Tourism Development Tax

Local Tax Designation by County

Source:

Information Letter #15-12

State of South Carolina
Local Tax Designation by
County Effective May 1, 2015
Collected by the SC Department of Revenue



This chart does not contain rates applicable to sales to the Catawba Indian reservation or local taxes on sales that are collected directly by the counties or municipalities.

Abbeville	7%	Chesterfield	8%	Hampton	8%	Newberry	7%
Aiken	8%	Clarendon	8%	Horry	7%	Oconee	6%
Allendale	8%	Colleton	8%	Horry (Myrtle Beach)	8%	Orangeburg	7%
Anderson	7%	Darlington	8%	Jasper	8%	Pickens	7%
Bamberg	8%	Dillon	8%	Kershaw	7%	Richland	8%
Barnwell	7%	Dorchester	7%	Lancaster	8%	Saluda	7%
Beaufort	6%	Edgefield	7%	Laurens	7%	Spartanburg	6%
Berkeley	8%	Fairfield	7%	Lee	8%	Sumter	8%
Calhoun	7%	Florence	8%	Lexington	7%	Union	6%
Charleston	8.5%	Georgetown	7%	Marion	8%	Williamsburg	7%
Cherokee	8%	Greenville	6%	Marlboro	8%	York	7%
Chester	8%	Greenwood	6%	McCormick	7%		

Special Notice

- Effective May 1, 2015, Colleton (Note: Colleton's 1% Local Option tax is still in effect) and Georgetown County will impose a 1% Capital Projects tax.
- Effective March 1, 2015, Aiken, Anderson, and Cherokee will impose a 1% Education Capital Improvement tax. (Cherokee County's 1% School District tax is repealed)



Maintenance Contracts and Software

Warranty/Maintenance Charges

- SC Revenue Ruling #11-1 currently rules the day
 - Rev. Rul. #11-1 reinstates Rev. Rul. #93-6
 - Rev. Rul. #93-6 addresses taxability of extended warranties
 - The information you'll be most interested in begins on pg. 2

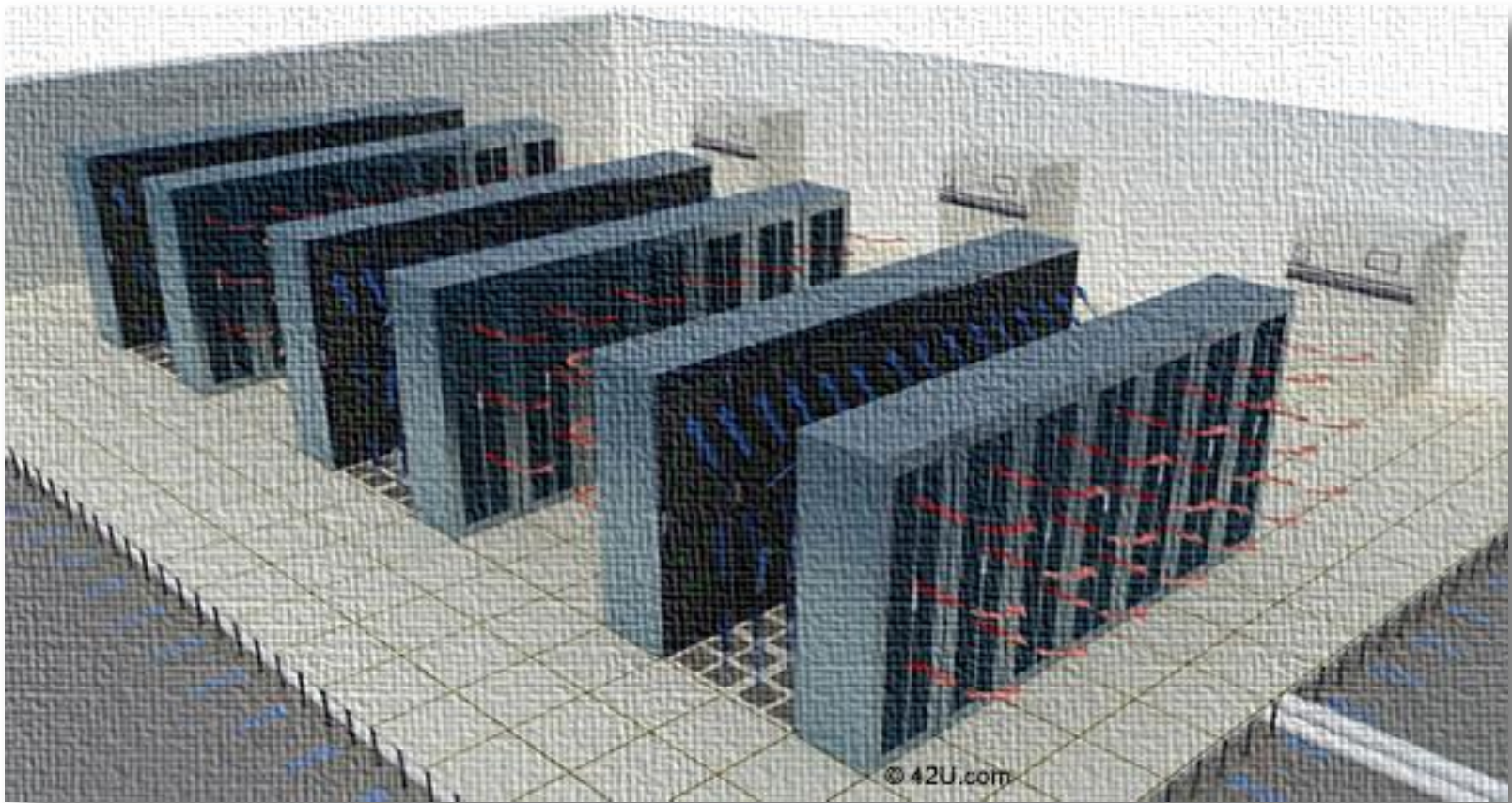
Warranty/Maintenance Charges

- Hardware maintenance and warranties
 - Effective September 1, 2011, if a maintenance contract or warranty is purchased “at the same time” as the hardware, equipment, etc.
 - Cost of agreement or warranty is included in purchase price, *i.e.* it’s subject to the sale or use tax, plus applicable local taxes

Warranty/Maintenance Charges

- Currently there's no authoritative guidance as to interpretation of the phrase "at the same time"
- *Suggestion: use common English understanding of the phrase*
- Same contractor/retailer/dealer purchased or billed on same day, same invoice or same or related purchase order ... may reasonably assume purchased "at the same time"

Software Purchases/ Maintenance Charges



Software Purchases/ Maintenance Charges

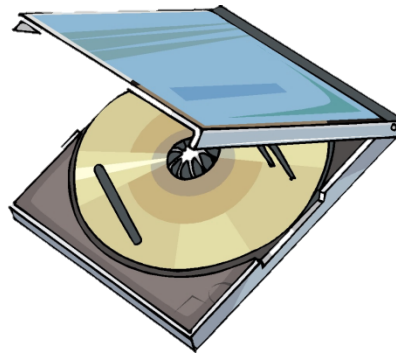
- SC Revenue Ruling #11-2 currently rules the day
 - Rev. Rul. #11-2 reinstates Revenue Ruling #03-5
 - Rev. Rul. #03-5 addresses taxability of software and software maintenance contracts
 - The information you'll be most interested in begins on pg. 2

Software Purchases/ Maintenance Charges

- Computer software sold and delivered to a purchaser by *tangible means*, such as on a disk, is a purchase that may be subject to the use tax
- §12-36-60 provides that TPP is “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, ...the sale or use of which is subject to tax ...

Software Purchases/ Maintenance Charges

- Prewritten Programs - The tax applies to total charges for producing and reproducing prewritten programs including charges for the disks or other properties when furnished by the seller or producer by tangible means.



Software Purchases/ Maintenance Charges

- Custom Software - prepared to the special order of a customer, the gross proceeds therefrom are subject to the tax when provided by tangible means
 - Includes custom software developed through modification of existing software for customer's specific needs
 - Includes charges to modify and adapt these programs to a customer's equipment (including testing) or translating software to a format or platform compatible with customer's equipment
 - Revenue Ruling #03-5

Software Purchases/ Maintenance Charges

- Computer software sold and delivered to a purchaser by *electronic means* isn't taxable
 - In making this determination it must be determined whether the true object of the sale of software electronically delivered is the sale of the intangible software: the "true object" is not the access or use of the communication or any other system
 - Accordingly, computer software sold and delivered by electronic means does not meet the definition of TPP and is therefore not subject to the use tax

Software Purchases/ Maintenance Charges

- Application Service Providers (ASP) - Charges by an ASP that allows a customer to access the ASP website and use the software *on that website* are subject to the use tax
 - charges are similar to charges by database access services and are therefore subject to the use tax
 - ASP isn't charging "for ... data processing" as defined in §12-36-910(C) and thus is taxable
- §§12-36-910(B)(3) & 12-36-1310(B)(3)
- Revenue Rulings #06-8 and 03-5
- South Carolina Regulation 117-329

Cloud Computing Services

- SC Private Letter Ruling # 14-2 addresses the taxability of charges, fees and costs incurred for cloud computing services.
- Note “limitations” of a private letter ruling (PLR).
- “Your facts” must fit squarely within the fact pattern on which the PLR is based.
- This PLR provides that under the specific fact pattern presented that “usage fees associated with such services, as described in the facts (presented in the PLR) aren’t subject to SC sales and use tax.

Software Purchases/ Maintenance Charges

- Maintenance Contracts Purchased in Conjunction With Software
 - Charges for maintenance agreements (whether optional or mandatory) made in conjunction with, or as part of the purchase of, software *delivered by tangible means* are includable in sales price and subject to the use tax
 - Includes renewals of maintenance contracts that were originally taxable

Software Purchases/ Maintenance Charges

- Maintenance Contracts Not Purchased in Conjunction With Software
 - They may or may not be taxable
 - True object of the contract must be established
 - If the true object of a contract is to get TPP (*e.g.* software updates disks), the total charges for the contract are taxable, even though certain services are provided
 - If the true object is to acquire services (*e.g.* telephone assist, tech support), then the total charges aren't taxable, even though certain TPP is provided



Exemptions & Exclusions

Government- Exemption

- Federal Government Is Exempt From Nearly Everything Thing It Buys And Sells
- All State, County And Municipal Entities Must Pay The Sales Or Use Tax, *unless the transaction is otherwise exempt*

Exclusions

- Example – sale for resale
 - §12-36-120(1)
 - SC Revenue Procedure # 08-2
 - Purchaser provides his vendor/supplier a Form ST-8 or ST-8A

Partial Exemptions (taxable, but subject to a cap)

- Aircraft
- Motor Vehicles (defined at §§ 56-2-110 thru 56-2-130)
- Motorcycles (on or off road)
- Boats
- Trailers and semi-trailers capable of being pulled *only* by a truck tractor
- Self propelled light construction equipment – max 160 net HP
- Fire trucks (funding source is inconsequential)



Partial Exemptions (taxable, but subject to a cap)

- Equipment provided or installed on a fire truck IF included in original acquisition transaction
- Fire safety ed. trailer (funding source is inconsequential)
 - Lease of each of the above items *if* lease states specific terms and remains in force for > 90 continuous days. (Funding source is inconsequential.) Each lease renewal or subsequent purchase is subject to tax again.)

Full Exemptions- Some Examples

- Sales to / by the federal government [§12-36-2120(2)]
- Sales of autos and motorcycles to nonresident military personnel [§12-36-2120(25)]
- War memorials and monuments [§12-36-2120(46)]



Full Exemptions- Some Examples

- Solid waste disposal collection bags required under a solid waste disposal plan of a county or other political subdivision [§12-36-2120(48)]
- Any property sold to the public via a Sheriff's sale [§12-36-2120(68)]
- Federal government contracts [SC Revenue Ruling # 04-9]
- 70% of gross proceeds of the rental or lease of portable toilets [§12-36-2120(62)]

Full Exemptions- Some Examples

- Sales of meals to school kids [§12-36-2120(10)(a)]
- TV, radio, and CATV supplies, equipment, machinery and electricity [§12-36-2120(26); SC Reg. 117-328]
- H₂O sold by public utilities and certain non-profit corporations [§12-36-2120(12)]



Full Exemptions- Some Examples

- Sales by nonprofit organizations [§12-36-2120(41)]
- Newspapers, newsprint paper and the SC Dept. of Ag. Market Bulletin [§12-36-2120(8)]
- Medicine and prosthetic devices sold by prescription [§12-36-2120(28)]
- Residential electricity and fuel [§12-36-2120(33)]



Full Exemptions- Some Examples

- 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 school library of these schools; and books, magazines, periodicals, newspapers and access to on-line information systems sold to *publicly supported state, county or regional libraries, provided are open to the public without charge*
- SC Reg. 117-316 and SC Rev. Rul. # 94-11

EXAMPLES OF TAXABLE PURCHASES

(Funding Source is Inconsequential)

- Firearms and ammunition for law enforcement personnel
- Police equipment, supplies, tactical supplies and equipment, uniforms, patches, badges, vests, etc.



EXAMPLES OF TAXABLE PURCHASES (Funding Source is Inconsequential)

- Office equipment, furniture, supplies



EXAMPLES OF TAXABLE PURCHASES (Funding Source is Inconsequential)

- Computer hardware and some software
- Printers, printer supplies
- Recreational equipment



EXAMPLES OF TAXABLE PURCHASES (Funding Source is Inconsequential)

- Shovels, hammers, wrenches, saws, nuts, bolts, fasteners
- Paint
- Signage

EXAMPLES OF TAXABLE PURCHASES (Funding Source is Inconsequential)

- Plants, planting material, irrigation supplies, trees
- Tires, auto repair parts, lubricants
- Insecticides, herbicides, pesticides
- Testing equipment



EXAMPLES OF TAXABLE PURCHASES (Funding Source is Inconsequential)

- Reference books and material (not public libraries)
- On-line research subscription / fees



Code Section 12-36-2120

Read §12-36-2120 for a listing of all sales and use tax exemptions





Questions?