

SALES & USE TAX FOR PUBLIC PROCUREMENT

**SC ASSOCIATION OF GOVERNMENTAL
PURCHASING OFFICIALS**

SEPTEMBER 14, 2017

1

THE BASICS OF SALES TAX

- South Carolina imposes a sales tax equal to 6%, plus applicable local taxes, on the gross proceeds of sale of tangible personal property by a retailer
- Sales tax first adopted in 1951
- It is a transaction tax
- It is a “vendor tax”
- Retailer has obligation to report & pay the tax

2

THE BASICS OF SALES TAX

- §12-36-910(A) reads, in pertinent part:

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.



3

THE BASICS OF SALES TAX

- Definitions
 - Tangible Personal Property (TPP)
 - personal property that may be seen, weighed, measured, felt, touched or in any manner is perceptible to the senses



4

THE BASICS OF SALES TAX

- Tangible personal property includes certain specific services and intangibles
 - Laundering and dry cleaning
 - Electricity
 - Communications services
 - Software, in certain circumstances
 - Accommodations and some additional guest charges



5

THE BASICS OF SALES TAX

- Definitions
 - Gross proceeds of sale - is the total amount proceeding or accruing from the retail sales of a business and is the measure or basis for the sales tax.
 - §12-36-110



6

GROSS PROCEEDS INCLUDES

- Bartering
- Leases & rentals of tangible personal property
- Withdrawal, use or consumption of tangible personal property by a person who bought the tangible personal property wholesale
 - Revenue Ruling #08-11
- Consignment sales
- Any services or transportation costs that are part of the sale, *e.g.* delivery, shipping, handling
- Fuel surcharges



7

GROSS PROCEEDS INCLUDES

- Lease cancellation fees
- Charges by an auto rental co., such as:
 - Fueling charges
 - Collision damage waiver
 - Personal accident coverage
 - Extended protection
 - Personal effects coverage



8

GROSS PROCEEDS INCLUDES

- Engraving charges
- Charges billed by photographers
- Rebates paid by third parties
- Warranty contracts, *in certain circumstances*
- Fabrication labor



9

GROSS PROCEEDS INCLUDES

- Installation labor, *not separately stated*
- Mandatory gratuities
 - *e.g.* 20% tip for all parties > 6
- Charges billed by a retailer for consultation, engineering and design as part of the retail sale of a sign or the retail sale of a wireless communications system that enhances radio signal strength within the customer's building
 - South Carolina Regulation 117-309.9 and Private Letter Rulings #07-3 and #07-4



10

GROSS PROCEEDS DOES NOT INCLUDE

- Cash discounts allowed and taken
- Trade-in allowances
- Installation labor, *separately stated*
- “Voluntary” gratuities, *e.g.* customer tips as she chooses
- Container deposits (required to ensure return of reusable container)
- Self-redeeming coupon



11

GROSS PROCEEDS DOES NOT INCLUDE

- Delivery and transportation charges, *in certain circumstances*
- 911 surcharges
- Charges for data processing
- Environmental surcharges
- Fees imposed on motor oil, tires, batteries, including refundable deposit (*i.e.* core charge) when a battery or used part isn't returned to retail



12

RETURN DUE DATE

- Sales tax reported on Form ST-3 and ST-389, if applicable
- Due by the 20th day of the month following the month for which sales tax is being reported.
 - Example: The August 2017 forms ST-3 and ST-389 are due by September 20, 2017. If 20th day falls on weekend or federal holiday due date becomes very next business day.
 - §12-36-2570



13

FREIGHT AND DELIVERY CHARGES

- See South Carolina Regulation 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



14

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



15

PURCHASER'S CERTIFICATE OF REGISTRATION

- Apply by using Form SCDOR 111
 - Apply on MYDORWAY
 - Apply at the DOR Service Centers
 - Mail the SCDOR 111
- No charge for a Purchaser's Certificate of Registration



16

THE BASICS OF 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.



17

THE BASICS OF USE TAX

- Definitions
 - Use
 - exercising any right or power over tangible personal property incident to ownership, or simply using the stuff



18

THE BASICS OF USE TAX

- South Carolina imposes a **Use Tax** equal to 6%, plus applicable local taxes, on the sales price of tangible personal property that has been bought at retail and *stored, used or otherwise consumed* in South Carolina
 - It is a transaction tax
 - It is a “vendee tax”
 - Purchaser has obligation to report & pay.



19

THE BASICS OF USE TAX

- *Sales tax* is imposed on retail sales in South Carolina
- *Use tax* complements the sales tax



20

THE BASICS OF USE TAX

- Use tax is imposed on the purchaser and applies to purchases of tangible personal property from out-of-state retailers for *use, storage or consumption* in South Carolina, 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



21

THE BASICS OF USE TAX

- Use tax is due on purchases from sellers such as:
 - eBay
 - Land's End
 - HSN
 - TigerDirect.com



22

THE BASICS OF USE TAX

- **Generally** ... use tax would apply when South Carolina sales tax and applicable local taxes aren't paid on those purchases when they *would have been* had they been bought from a South Carolina retailer
 - *State Tax, and*
 - *Local Taxes*
 - *are due*



23

USE TAX CREDIT

- South Carolina will allow a credit against the South Carolina use tax for another state's sales and local taxes, *provided*:
 - Tangible personal property 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.



24

THE BASICS OF USE TAX

- Example: Tangible Personal Property purchased from an Augusta retailer.
 - South Carolina purchaser *goes to* Augusta to buy the tangible personal property and pays 7% Georgia state and local taxes.
 - Returns to South Carolina with tangible personal property and consumes the tangible personal property in Aiken County.

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



25

THE BASICS OF USE TAX

- One more example: Tangible Personal Property is purchased from a Knoxville retailer.
 - South Carolina purchaser *goes to* Knoxville to buy the tangible personal property and pays 11% Tennessee state and local taxes.
 - Returns to South Carolina with the tangible personal property and consumes the tangible personal property in Greenwood County.



26

THE BASICS OF USE TAX

South Carolina use tax due	6%
Greenwood County local taxes	0%
Total use tax due, before credit	6%
Less Tennessee tax <i>legally due and paid</i>	11%
South Carolina use tax due	0%

Sorry, no refund from anyone is due the taxpayer. (*South Carolina Revenue Ruling # 06-4*)



27

LOCAL TAX

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



28

LOCAL TAX

- Local tax rate is determined by where the tangible personal property will be ***used, stored or consumed***, regardless of where the sale actually takes place



29

REMINDERS

- Transactions exempt from the Food Tax are still subject to the Local Option Taxes (IL 17-4)
- Business purchasing unprepared food for consumption are **not** exempt from the tax (Reg 117-337.4)



30

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 South Carolina 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.



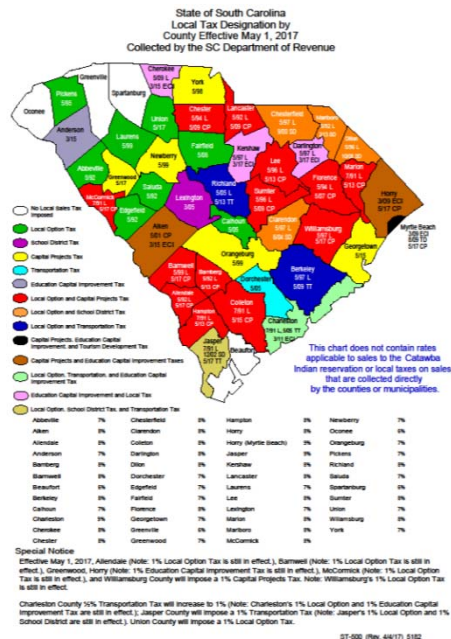
31

Local Tax Designation by County

Effective May 1, 2017

www.dor.sc.gov

- Taxes > Sales and Use
- Sales Tax
- Summary Page under Tax Rates



DISCOUNTS

- Taxpayers are allowed a discount for filing returns and paying taxes timely.
 - If total tax due (for all taxes) is less than \$100, the discount is 3%
 - If total tax due (for all taxes) is \$100 or more, the discount is 2%



33

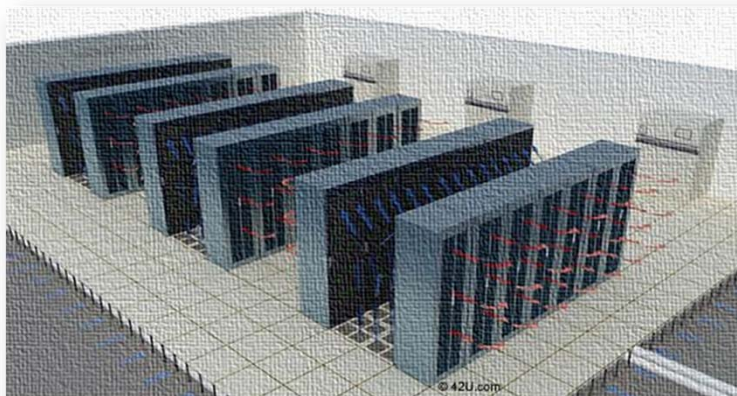
DISCOUNTS

- \$3,000 in a state fiscal year
 - July 1 through June 30
 - Per Taxpayer, all locations, for all tax types
- \$3,100 if you file Electronically
- \$10,000 if non resident retailer not required to register in SC



34

WARRANTY/MAINTENANCE INFORMATION



35

WARRANTY/MAINTENANCE INFORMATION

- South Carolina Revenue Ruling #11-1
 - Revenue Ruling #11-1 reinstates Revenue Ruling #93-6, a copy of which you should have
 - Revenue Ruling #93-6 addresses taxability of extended warranties



36

WARRANTY/MAINTENANCE INFORMATION

- Hardware maintenance and warranties
 - Examples:
 - HVAC equipment maintenance contracts and extended warranties
 - Office equipment maintenance contracts and extended warranties
 - Pumps, generators, grinders, compressors maintenance contracts and extended warranties
 - NOT automobile maintenance contracts and extended warranties



37

WARRANTY/MAINTENANCE INFORMATION

- Hardware maintenance and warranties
 - Effective September 1, 2011, if a maintenance contract or warranty is sold “at the same time” as the hardware, equipment, etc.
 - Cost of agreement or warranty is included in gross proceeds of sale or sales price, *i.e.* it is subject to the sales or use tax
 - Funding source is of no consequence



38

WARRANTY/MAINTENANCE INFORMATION

- 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 sold or billed on same day, same invoice or same or related purchase order ... may reasonably assume sold "at the same time"



39

WARRANTY/MAINTENANCE INFORMATION

- Example: Newberry County EMS purchases a 100 kw generator through State Purchasing.
 - The purchase order includes the cost of an extended warranty and maintenance contract through the supplier/vendor.
 - Sounds as though the extended warranty and maintenance contract was purchased "at the same time" as the generator, hence those charges are included in gross proceeds or sale or sales price, *i.e.* subject to the sales tax or use tax, plus applicable local taxes



40

SOFTWARE PURCHASE/ MAINTENANCE CHARGES



SOFTWARE PURCHASES/ MAINTENANCE CHARGES

- South Carolina Revenue Ruling #11-2
 - Revenue Ruling #11-2 reinstates Revenue Ruling #03-5, a copy of which you should have
 - Revenue Ruling #03-5 addresses taxability of software and software maintenance contracts

SOFTWARE PURCHASES

- Computer software sold and delivered to a purchaser by *tangible means*, such as on a disk, is a sale subject to the sales or use tax
- §12-36-60 provides that tangible personal property 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 ...



43

SOFTWARE PURCHASES

- 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.



44

SOFTWARE PURCHASES

- 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



45

SOFTWARE PURCHASES

- Application Service Providers (ASP)
 - charges are similar to charges by database access services and are therefore subject to the sales and use tax
 - ASP isn't charging "for ... data processing" as defined in §12-36-910(C) and thus is taxable



46

SOFTWARE PURCHASES

- Please Note: Charges by an Application Service Providers (ASP) that allows a customer to access the application service provider website and use the software *on that website* are subject to the sales and use tax
 - §§12-36-910(B)(3) & 12-36-1310(B)(3)
 - Revenue Rulings #06-8 & #03-5
 - South Carolina Regulation 117-329



47

SOFTWARE PURCHASES

- 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 tangible personal property and is therefore not subject to the sales and use tax



48

SOFTWARE MAINTENANCE

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



49

SOFTWARE MAINTENANCE

- Maintenance Contracts Not Made in Conjunction With the Sale of 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 tangible personal property (*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 tangible personal property is provided



50

SOFTWARE EXAMPLE

- Consider this scenario to illustrate this concept
 - Software is sold and delivered electronically whereby a technician brings their laptop to the buyer's office,
 - establishes a connection between the laptop and the buyer's computer *via the Internet, a wireless network, or any other wireless connection* in order to download the software,
 - and then terminates the connection between the computers and leaves.

Taxable for sales or use tax?



51

SOFTWARE EXAMPLE

- **Answer:** Software sold and delivered by electronic means via the Internet, a wireless network, or any other wireless connection at the buyer's office isn't subject to the sales and use tax, *provided* no part of the software, including back-up tapes, disks, or flash drives, is delivered by tangible means



52

GOVERNMENT EXEMPTION

- All State, County And Municipal Entities **Must Pay** the Sales or Use Tax,
- *unless the transaction is otherwise exempt*



53

EXCLUSIONS

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



54

EXEMPTIONS

- Sales to / by the federal government [§12-36-2120(2)]
- Federal government contracts
Exemption Application ST-10G
[SC Revenue Ruling # 04-9]
- War memorials and monuments [§12-36-2120(46)]



55

EXEMPTIONS

- 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)]
- Water sold by public utilities and certain non-profit corporations [§12-36-2120(12)]



56

EXEMPTIONS

- 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]
- Sale for resale and certain non-profit corporations [§12-36-2120(12)]



57

NON PROFIT ORGANIZATION EXEMPTION CERTIFICATE

- An ST-9 issued to a non-profit organization under §12-36-2120(41) will have the following information printed above the name and address:

****Certificate Valid Only if All Apply****

- Purchases will be resold
- Proceeds are used for an exempt purpose
- No profit will incur to any individual



58

EXEMPTIONS

- 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; and
- books, magazines, periodicals, newspapers and access to on-line information systems sold to ***publicly supported state, county or regional libraries, provided they are open to the public without charge***

Regulation 117-316 and

Revenue Ruling # 94-11



59

EXAMPLES OF TAXABLE PURCHASES

- Firearms and ammunition for law enforcement personnel
- Police equipment, supplies, tactical supplies and equipment, uniforms, patches, badges, vests, etc.
- Office equipment, furniture, supplies
- Computer hardware and some software
- Printers, printer supplies
- Recreational equipment
- Shovels, hammers, wrenches, saws, nuts, bolts, fasteners, paint, signage



60

EXAMPLES OF TAXABLE PURCHASES

- Plants, planting material, irrigation supplies, trees
- Tires, auto repair parts, lubricants
- Insecticides, herbicides, pesticides
- Testing equipment
- Reference books and material (not public libraries)
- On-line research subscription / fees

FUNDING SOURCE IS INCONSEQUENTIAL



61

CODE SECTION 12-36-2120

Read §12-36-2120 for a listing of all
Sales and Use Tax Exemptions



62

QUESTIONS??



CONTACT US

SALES & USE TAX QUESTIONS: 803-898-5000

ACCOMMODATIONS QUESTIONS: 803-898-5970

VISIT OUR WEBSITE: DOR.SC.GOV