**South Carolina General Assembly**

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**S. 942**

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Summary: Palmetto Fair Tax Act

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[12/9/2009](file:///p:\pprever\2009-10\942_20091209.docx)

**A** **BILL**

TO AMEND TITLE 12 OF THE 1976 CODE, RELATING TO TAXATION, BY ENACTING THE PALMETTO FAIR TAX ACT; TO REPEAL CHAPTER 6, TITLE 12, RELATING TO THE SOUTH CAROLINA INCOME TAX ACT; TO REPEAL CHAPTER 8, TITLE 12, RELATING TO INCOME TAX WITHHOLDING; TO REPEAL CHAPTER 11, TITLE 12, RELATING TO INCOME TAX ON BANKS; TO REPEAL CHAPTER 13, TITLE 12, RELATING TO INCOME TAX ON BUILDING AND LOAN ASSOCIATIONS; TO REPEAL CHAPTER 16, TITLE 12, RELATING TO THE ESTATE TAX; TO REPEAL CHAPTER 36, TITLE 12, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX; TO ADD CHAPTER 1 TO TITLE 12, BY ADDING ARTICLE 1 TO PROVIDE NECESSARY DEFINITIONS AND BY ADDING ARTICLE 2 TO PROVIDE FOR A \_\_\_ PERCENT TAX ON THE GROSS RETAIL SALES AND USE OF GOODS AND SERVICES, BY ADDING ARTICLE 3 TO ESTABLISH THE FAMILY CONSUMPTION ALLOWANCE, THE QUALIFYING CRITERIA FOR THE ALLOWANCE, THE MANNER IN WHICH THE ALLOWANCE IS CALCULATED, AND THE MANNER IN WHICH THE ALLOWANCE IS DISTRIBUTED, BY ADDING ARTICLE 4 TO PROVIDE FOR CREDITS, REFUNDS, AND EXEMPTIONS FROM THE TAX IMPOSED BY CHAPTER 1, BY ADDING ARTICLE 5 TO REQUIRE RETAILER TO OBTAIN A LICENSE, TO PROVIDE FOR THE REQUIREMENTS FOR LICENSURE, AND TO PROVIDE FOR THE OBLIGATIONS OF LICENSEES, AND BY ADDING ARTICLE 6 TO PROVIDE FOR GENERAL PROVISIONS RELATING TO THE COLLECTION OF TAXES IMPOSED BY THIS CHAPTER, REPORTING REQUIREMENTS, AND OTHERWISE PROVIDE FOR THE EFFICIENT ADMINISTRATION OF THE PROVISIONS OF THIS CHAPTER BY THE DEPARTMENT OF REVENUE; AND TO REPEAL SECTIONS 11‑11‑155 AND 11‑11‑156.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be referred to and cited as “The Palmetto Fair Tax Act”.

SECTION 2. Chapter 6, Title 12 of the 1976 Code, The South Carolina Income Tax Act, is repealed.

SECTION 3. Chapter 8, Title 12 of the 1976 Code, relating to income tax withholding, is repealed.

SECTION 4. Chapter 11, Title 12 of the 1976 Code, relating to income tax on banks, is repealed.

SECTION 5. Chapter 13, Title 12 of the 1976 Code, relating to income tax on building and loan associations, is repealed.

SECTION 6. Chapter 16, Title 12 of the 1976 Code, relating to the estate tax, is repealed.

SECTION 7. Chapter 36, Title 12 of the 1976 Code, the South Carolina Sales and Use Tax Act, is repealed.

SECTION 8. Title 12 of the 1976 Code is amended by adding:

“CHAPTER 1

THE PALMETTO FAIR TAX ACT

ARTICLE 1

DEFINITIONS

Section 12‑1‑10. For the purposes of this chapter:

(1) ‘Affiliated firm’ means a firm that owns fifty percent or more of the voting shares in a corporation or fifty percent or more of the capital interests of a business firm that is not a corporation.

(2) ‘Business use ratio’ means the ration of business use to total use for a particular calendar month. For vehicles, the business use ratio is the ration of business purpose miles to total miles in a particular calendar month. For real property, the business use ratio is the ratio of floor space used primarily for business purposes to floor space in a particular calendar month. For tangible personal property other than vehicles, the business use ratio is the ration of total time used for business purposes to total time used in a particular calendar year. For other property or services, the business use ration is calculated by using a reasonable method.

(3) ‘Education and training’ means tuition for primary, secondary, and postsecondary level education, and job related training courses.

(4) ‘Gross proceeds of sales’, or any similar term, means the value proceeding or accruing from selling, leasing, or renting tangible personal property or the value proceeding or accruing from selling, providing, furnishing, or rendering a service.

(5) ‘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.

(6) ‘Registered seller’ means a person that holds a current, valid retail license.

(7) ‘Retailer’ and ‘seller’ include every person:

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

(ii) 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;

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

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

(v) selling electric power or energy;

(vi) 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;

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

(ii) 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.

(8) ‘Retailer maintaining a place of business in this State’ 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.

(9) ‘Sale’ and ‘purchase’ mean any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

(a) 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;

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

(c) a license to use or consume; and

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

(10) ‘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.

(11) ‘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.

(a) The term includes:

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

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

(b) The term does not include:

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

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

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

(iv) 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.

(12) ‘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.

(13) ‘Taxable employer’ means any household employing domestic servants and any state or local governmental unit. The term taxable employer does not include an employer that is engaged in a trade or business, a not‑for‑profit organization, or a governmental enterprise as defined in Section 12‑1‑240.

(14) ‘Taxable property’ or ‘taxable service’ means property or a service that is purchased by a person engaged in a trade or business for the purpose of employing or using the property or service in the production, rendering, or sale of other property or series in the ordinary course of that trade or business.

(15) ‘Taxable service’ means any service, including any service performed by an employee for which the employee is paid wages or salary by a taxable employer.

(16) ‘Taxpayer’ means any person liable for taxes under this chapter.

(17) ‘Use’, in relation to use tax, 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.

(18) ‘Used property’ means tangible personal property on which the sales tax has already been collected and property that was held for other than a business purpose on the effective date of this chapter.

(19) ‘Wages’ and ‘salary’ means all compensation paid for employment service including cash compensation, employee benefits, disability insurance, or wage replacement insurance payments, unemployment compensation insurance, worker’s compensation insurance, and the fair market value of any other consideration paid by an employer to an employee in consideration for employment services rendered.

(20) ‘Wholesale sale’ and ‘sale at wholesale’ mean a sale of:

(a) 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;

(b) 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;

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

(d) 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.

(e) 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.

ARTICLE 2

RETAIL SALES AND USE TAX RATE

Section 12‑1‑200. (A) A sales tax, equal to \_\_\_\_ 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 and upon every person engaged or continuing within this State in the business of selling, rendering, providing or otherwise furnishing services, except financial mediation services.

(B) In the case of goods that are leased for a long term rather than sold, the principal component is taxable as if a purchase had been made on the day in which the lease was executed.

(C) 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 or the sale of a service 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.

Section 12‑1‑210. (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 \_\_\_\_ percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

(B) 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.

(C) 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.

Section 12‑1‑220. (A) For the purposes of this section:

(1) ‘Financial intermediation services’ means the sum of explicitly and implicitly charged fees for financial services.

(2) ‘Explicitly charged fees’ or ‘explicit fees’ means fully revealed fees that leave no question as to the service for which a fee is being charged or intent of the fee. Explicitly charged fees include, but are not limited to brokerage fees; stated banking, loan origination, processing, documentation, credit check fees or other similar fees; safe‑deposit box fees, trustee’s fees; mutual fund management, sales, and exit fees. Insurance premiums, to the extent that they are not allocable to the investment account of the underlying insurance policy, are explicit fees.

(3) ‘Implicitly charged fees’ or ‘implicit fees’ means fees that are included in an interest rate charged to a consumer rather than stated separately.

(B) Except for financial intermediation fees incurred for a business purpose, a sales tax, equal to six and one half percent is imposed on financial intermediation services.

(C) The tax imposed by this section must be calculated and collected with the same frequency that statements are rendered by the financial institution in connection with account or debt but not less than quarterly.

Section 12‑1‑230. (A) For the purposes of this section, ‘government enterprise’ means an entity owned or operated by the State or a political subdivision that receives gross payment from private persons.

(B) Governmental enterprises are responsible for collecting and remitting the tax imposed by Section 12‑1‑200 on any sale of taxable property or services. Government enterprises must comply with all duties imposed by this chapter and are liable for penalties and subject to enforcement actions in the same manner as private entities.

ARTICLE 3

FAMILY CONSUMPTION ALLOWANCE

Section 12‑1‑300. For the purposes of this article:

(1) ‘Family determination date’ means a date assigned by the Department of Revenue for purposes of determining qualified family size and other information necessary for the administration of this article.

(2) ‘Family members’ means an individual, the individual’s spouse, all of the individual’s lineal ancestors and descendants, all of the individual’s legally adopted children and all children under the individual’s legal guardianship. For the purposes of inclusion in this definition:

(a) any person who was a registered student during at least five months during a given calendar year living away from the common family residence but who receives over fifty percent of his support during the calendar year from family members family shall be included as part of the family for the purposes of this article, and

(b) the child of divorced or legally separated parents shall be treated as part of the family of the custodial parent. In cases of joint custody, the custodial parent for the purposes of this article shall be the parent that has custody of the child for more than one‑half of the time during a given calendar year.

(3) ‘Monthly poverty level’ means one‑twelfth of the annual federal poverty level.

(4) ‘Qualified family’ means one or more family members sharing a common residence including an individual, his spouse, children, grandchildren, parents, and grandparents. Children and students living away from home are considered family members if they are registered as a student for at least five months out of the year and receive at least fifty percent of their support from parents or guardians in the residence claiming them as part of a qualified family. Children of divorced parents are deemed to be family members of the custodial parent.

Section 12‑1‑310. (A) In order for a person to be counted as a family member of a qualified family, he must have a bona fide Social Security number and be a lawful resident of the United States.

(B) A person who is incarcerated in a local, state, or federal jail, prison, mental hospital, or other institution on the family determination date and is scheduled to be incarcerated for at least six months during the twelve month period following the family determination date may not be included as a member of a qualified family.

Section 12‑36‑320. (A) The Department of Revenue shall provide a monthly sales tax rebate to duly registered qualified families in an amount equal to the product of:

(1) the average rate of tax imposed pursuant to article 2 of this chapter; and

(2) the monthly poverty level.

(B) The payments shall be made directly to the persons designated by the qualifying family in the annual or revised registration for each qualified family in effect with respect to the month for which the payment is being made. Payments may only be made to persons eighteen years of age or older. If more than one person is designated to receive the rebate, then the rebate payment shall be divided evenly between or among those persons designated.

(C) Rebates shall be provided in the form of debit cards that carry cash balances in their memory for use in making purchases at retail establishments or by direct electronic deposit.

(D) If the department determines that it is more efficient or effective to mail rebate checks to particular qualified families, then the department may mail those rebate checks on or before the first business day of the month for which the rebate is provided.

Section 12‑36‑330. (A) In order to receive the monthly rebate provided in Section 12‑1‑310, a qualified family must register with the department on forms provided by the department within thirty days of the family determination date. The registration form must be signed by all members of the family twenty‑one years of age or older and must provide at least:

(1) the name of each family member on the family determination date who shared the qualified family’s residence on the family determination date;

(2) the Social Security number of each family member on the family determination who shared the qualified family’s residence on the family determination date;

(3) the family member or family members to whom the rebate should be paid;

(4) a certification that all listed family members are lawful residents of the United States;

(5) a certification that all family members sharing the common residence are listed;

(6) a certification that no family members were incarcerated for more than six months on the family determination date; and

(7) the address of the qualified family.

(B) An annual or revised registration shall be deemed filed when the registration form is:

(1) deposited in the United States mail, postage prepaid, to the address provided by the department;

(2) delivered and accepted at the department’s offices; or

(3) provided to a commercial private courier for delivery to the department within two days.

(C) After the initial registration, a qualified family that fails to timely renew its registration, will cease receiving the rebate ninety days after the last date upon which the qualified family could timely renew its registration.

(D) Registration is not mandatory for any qualified family. However, any qualified family that fails to register within thirty days of the family determination date, shall not receive the monthly rebate. A qualified family that failed to timely register but subsequently completes registration, shall receive the monthly rebate and is entitled to up to six months of lapsed rebate payments. No interest on lapsed rebate payments shall be paid.

Section 12‑1‑340. (A) At least thirty days before the family determination date, the department shall mail to the address shown on the most recent rebate registration or change of address notice, a proposed registration that may be simply signed by the appropriate family member if circumstances have not changed.

(B) A qualified family may file a revised registration form to reflect a change in family circumstances. The revised registration form must be signed by all members of the family twenty‑one years of age or older. Revised registration forms must contain at least:

(1) the name of each family member who shared the qualified family’s residence on the filing date of the revised registration;

(2) the Social Security number of each family member or older who shared the qualified family’s residence on the filing date of the revised registration;

(3) the family member of family members to whom the rebate should be paid;

(4) a certification that all listed family members are lawful residents of the United States;

(5) a certification that all family members sharing the common residence are listed;

(6) a certification that no family members were incarcerated on the family determination date; and

(7) the address of the qualified family.

(C) Qualified families must file a change of address form with the department within sixty days of moving to a new residence.

Section 12‑1‑350. The department must promulgate regulations to administer and enforce the provisions of this article.

ARTICLE 4

CREDITS, REFUNDS, AND EXEMPTIONS

Section 12‑1‑400. Purchases of tangible personal property or services by a taxpayer for the purpose of using the property or services in the production, provision, rendering, or sale of other taxable tangible personal property or services in the ordinary course of the taxpayer’s business are not taxable under this chapter. Purchases made by taxpayers for use in activities not engaged in for profit as determined by the Internal Revenue Code Section 183 are not eligible for this exemption.

Section 12‑1‑410. A taxpayer that paid taxes imposed by this chapter on tangible personal property or services for personal consumption that later uses the item at least ninety five percent for business purposes is entitled to a credit equal to the lesser of the amount of tax paid; or the amount of tax that would have been paid to purchase the item at fair market value at the time when it was converted from personal to business use.

Section 12‑1‑420. (A) Tithes, dues, contributions, and similar payments to qualified not‑for‑profit organizations are not considered payments for taxable property or services subject to taxation under this chapter. Services provided by qualified not‑for‑profit organizations are not subject to tax under this chapter.

(B) To be a qualified not‑for‑profit organization, the Department of Revenue must certify that a taxpayer is organized and operating exclusively for religious, charitable, scientific, literary, educational, or other eleemosynary purposes.

Section 12‑1‑430. Every licensed retailer filing a timely monthly sales tax report qualifies for a taxpayer administration credit for collecting the tax imposed by this chapter. The retailer may claim the credit against the amount due on his monthly sales tax return. The credit is equal to the greater of two hundred dollars or one quarter of one percent of the tax due. The credit may not exceed twenty percent of the tax due.

Section 12‑1‑440. (A) For the purposes of this section, ‘bad debt’ means a bona fide business loan or debt that comes wholly or partially worthless. No loan may be considered wholly or partially worthless unless it has been in arrears for at least one hundred eighty days, unless the debt is discharged wholly or partially in bankruptcy within the one hundred eighty day period. A loan or debt in arrears for at least one hundred eighty days may not be deemed wholly or partially worthless if a payment schedule has been entered into between the debtor and the lender.

(B) A taxpayer who is a creditor to debtor whose debt to the creditor is a bad debt may claim a credit equal to the tax rate imposed by the chapter multiplied by the amount of the bad debt divided by one minus the tax rate imposed by this chapter. The credit allowed in this subsection does not apply to unpaid invoices.

Section 12‑1‑450. A taxpayer who has elected the accrual method of reporting, has remitted tax on unpaid invoices, and has not been paid six months after the invoice was due to be paid may claim a credit pursuant to this section equal to the amount of tax remitted. To qualify for this credit the taxpayer must have charged the tax on the invoice, remitted the invoiced tax, and delivered the taxable property or performed the taxable service invoiced.

Section 12‑1‑460. For the purposes of this section, ‘insurance contract’ shall include a life insurance contract, health insurance contract, a property and casualty loss insurance contract, a general liability insurance contract, a marine insurance contract, a fire insurance contract, an accident insurance contract, a disability insurance contract, a long‑term care insurance contract, and an insurance contract that provides a combination of these types of insurance.

(B) A person receiving a payment from an insurer pursuant to an insurance contract is entitled to a credit less any amount paid to the insured by the insurer as provided in subsection (C), if the entire premium for the insurance contract giving rise to the insurer’s obligation to make a payment to the insured was subject to the tax imposed by this chapter and that tax was paid.

(C) The amount of the credit provided for in subsection (A) is the product of:

(1) the tax rate imposed by this chapter and

(2) the amount of the payment made by the insurer to the insured divided by the quantity that is one minus the rate of tax imposed by this chapter.

(D) The credit shall be paid by the insurer to the insured and the insurer shall be entitled to the credit instead of the insured.

Section 12‑1‑470. (A) For the purposes of this section, the mixed use property or service amount for each month that the property was owned is:

(1) one‑three‑hundred‑sixtieth of the gross payment for real property for three hundred sixty months or until the property is sold;

(2) one‑eighty‑fourth of the gross payments for tangible personal property for eighty four months or until the property is sold;

(3) one‑sixtieth of the gross payment for vehicles or until the property is sold; or

(4) for other types of taxable property or services, a reasonable amount or in accordance with regulations promulgated by the department.

(B) A registered seller is entitled to a business use conversion credit on mixed use property equal to the product of the mixed use amount, the business use ratio, and the tax rate imposed by this chapter.

(C) A person entitled to a credit under this section must account for the mixed use on a calendar year basis, and may file for the credit with respect to mixed use property in any month following the calendar year giving rise to the credit.

(D) Reasonable records must be maintained to support a person’s business use of the mixed use property or service.

Section 12‑1‑480. Taxpayers are entitled to a refund of any tax overpayment. Overpayment credits may be claimed on monthly sales tax reports or may be remitted to the taxpayer by the Department of Revenue upon proper application. If a taxpayer applies to the department for a refund, the department must process the request within sixty days. If the department does not process the refund within sixty days, the taxpayer is entitled to interest at the legal rate for each day that the department delays final processing of the request.

Section 12‑1‑490. 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) taxable property or services purchased for the purpose of using the property or service in the production, provision, rendering, or sale of other taxable property or services in the ordinary course of that business;

(4) office supplies, or other commodities, and services resold by the Division of General Services of the State Budget and Control Board to departments and agencies of the state government, if the tax was paid on the divisions original purchase;

(5) education and training;

(6)(a) motor fuel, blended fuel, and alternative fuel subject to tax under Chapter 28 of Title 12;

(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; and

(7) a lottery ticket sold pursuant to Chapter 150 of Title 59.

Section 12‑1‑495. A person eighty‑five years of age or older purchasing tangible personal property or services for his own personal use is entitled to a one percent exclusion from the tax imposed by this chapter, if at the time of sale, the individual requests the exclusion and provides the retailer with proof of age.

ARTICLE 5.

RETAIL LICENSE

Section 12‑1‑500. (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 12‑1‑490(9)(a);

(3) persons furnishing accommodations to transients for one week or less in any calendar quarter. 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 12‑1‑490(9)(b).

(C) Retailers making sales at a special event, in lieu of the licensing requirements of this section and discount provisions of Section 12‑1‑430, 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 under item (2) or (3) of subsection (A) of this section.

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

Section 12‑1‑510. 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.

Section 12‑1‑520. 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.

Section 12‑36‑530. 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.

Section 12‑36‑540. 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.

ARTICLE 6.

GENERAL PROVISIONS

Section 12‑1‑600. (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.

Section 12‑1‑610. 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.

Section 12‑1‑620. (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 that 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.

Section 12‑1‑630. Notwithstanding the provisions of this chapter, the department may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, and penalties and interest on the underpayments.

Section 12‑1‑640. (A) On all sales of retailers liable for the tax imposed by this chapter 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.

(B) 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.

Section 12‑1‑650. (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.

Section 12‑1‑660. The department, if it considers it necessary, may require returns and payment of the tax for other than monthly periods.

Section 12‑1‑670. (A) When a sales or use tax return required by Section 12‑1‑650 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.

(B) In no case is a discount allowed if the return, or the tax on it is received after the due date, pursuant to Section 12‑1‑430, 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.

Section 12‑1‑680. (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 article two of this chapter.

(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.

Section 12‑1‑690. The taxes imposed by this chapter must be credited to the general fund of the State.

Section 12‑1‑700. 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.

Section 12‑1‑710. The Department of Revenue shall administer and enforce the provisions of this chapter.

Section 12‑1‑720. 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.”

SECTION 9. Section 11‑11‑155 and Section 11‑11‑156 of the 1976 Code are repealed.

SECTION 10. This act takes effect January 1, 2011.

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