



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #91-17

SUBJECT: Local Option Sales & Use Tax
(Sales, Use & Property)

TAX MANAGERS: John McCormack & Jerry Knight

EFFECTIVE DATE: January 1, 1991

SUPERSEDES: SC Revenue Ruling #90-11, Information Letter #91-13 and all previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 4-10-10, et. seq. (Supp. 1990)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Enacted June, 1991)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

FACTS:

On July 30, 1991, the South Carolina Attorney General issued an opinion concerning the Local Option Sales and Use Tax, a copy of which is attached. The opinion holds that a "retail sale of tangible personal property is not subject to the local option sales tax when the seller located within a county that imposes the tax is required to deliver the property to the purchaser outside of that county."

The opinion stated in a footnote that the "opinion does not treat the question of whether the seller is required to collect the use tax when the property is delivered into another county that also imposes the local option sales and use tax. Such is dependent upon the controlling facts and the extent of the seller's activity with that county. Such a sale, however, would be subject to the local option use tax in the county wherein the sale was consummated by delivery."

WHAT DOES THE ATTORNEY GENERAL'S OPINION MEAN?

The South Carolina Tax Commission has adopted the Attorney General's opinion effective July 1, 1991. Therefore, SC Revenue Ruling #90-11 and Information Letter #91-13 are rescinded.

Retailers in counties that have imposed the local option sales and use tax must now remit the 1% sales tax only on sales of tangible personal property delivered within the county. Sales of tangible personal property that are delivered by the retailers outside the county are not subject to the 1% sales tax.

However, depending on the facts and circumstances, retailers may be required to collect the 1% use tax if the county into which the property is delivered has imposed the local option sales and use tax. (See Questions #1 - #5.)

For the purposes of this document, the local option sales tax will be referred to as the "1% sales tax" and the local option use tax will be referred to as the "1% use tax". Also, for purposes of this document, a "local option tax county" is a county that has imposed the 1% sales and use taxes.

LIABILITY FOR 1% LOCAL OPTION TAX: A SUMMARY

1% Sales Tax: If a retailer is located in a local option tax county, he is liable for the 1% sales tax on all sales of tangible personal property delivered within the county in which he is located.

1% Use Tax: If a retailer delivers tangible personal property into a local option tax county, the person taking delivery and first storing, using or consuming the property in the local option tax county is liable for the 1% use tax.

However, if certain criteria are met, the retailer making deliveries into a local option tax county can be required to collect that county's 1% use tax. (See Questions #1 - #5.)

If the retailer is required to collect a county's 1% use tax, he does not become liable for the tax, but is held accountable for the tax as a collection agent for the State. Therefore, if upon being audited, it is found such retailer has failed to collect that county's 1% use tax on any taxable sales, the Tax Commission may assess the retailer for that county's 1% use tax.

NOTE: A purchaser is not liable for a county's 1% use tax if he takes delivery in another county and pays the other county's 1% sales tax. Also, the purchaser is relieved of the liability for the 1% use tax if he has a receipt from a retailer showing the retailer has collected the 1% use tax.

HOW PLACE OF DELIVERY IS DETERMINED:

For purposes of the 1% local option tax and this document, delivery of tangible personal property is defined to occur when and where title or possession of tangible personal property transfers from the retailer to his customer. Following are guidelines to be used in determining when and where delivery occurs:

FOB Destination Or Similar Terms: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

FOB Shipping Point Or Similar Terms: Delivery is considered to take place at the retailer's location. Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

Shipping Terms Are Unspecified: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

Retailer Uses Own Vehicle: If a retailer uses his own vehicle(s) for making deliveries, delivery is considered to take place at the purchaser's location or wherever delivered at the direction of the purchaser. This applies whether the vehicles are owned or leased by the retailer.

Situations Where Title Transfers, But Not Possession: Delivery is considered to take place at the retailer's location.

For example, a printer may produce business cards for a customer. The cards include all needed information except for the employee name. The printer keeps possession of, but not title to, the cards. At the direction of the customer, the printer will imprint the customer's cards with an employee's name and send the imprinted cards to the customer.

Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

NOTE: Retailers reporting sales for purposes of the local option tax must report their sales by county and municipality where delivery occurs.

RETAILERS CANNOT RELY ON MAILING ADDRESSES IN REPORTING THE LOCAL OPTION TAX. A MAILING ADDRESS IS NOT AN ACCURATE INDICATION AS TO WHETHER OR NOT A LOCATION IS WITHIN A PARTICULAR MUNICIPALITY OR COUNTY.

QUESTIONS & ANSWERS CONCERNING THE 1% SALES AND USE TAXES:

IN-STATE RETAILERS - REPORTING REQUIREMENTS:

1. Q. How is a retailer who is located in a county that has imposed the local option tax to report his sales for purposes of the 1% sales and use taxes?
 - A. 1% Sales Tax: A retailer located in a local option tax county is subject to the 1% sales tax on all sales of tangible personal property delivered inside the county in which the retailer is located.

1% Use Tax: A retailer located in a local option tax county who makes deliveries into another local option tax county is required to collect the other county's 1% use tax, if certain criteria are met. (See Question #3.)

Sales on which a retailer is required to report the 1% sales or use tax are to be reported by county and municipality of delivery on Form ST-389, which is to be attached to the appropriate sales and use tax return.

2. Q. How is a retailer who is located in a county that has not imposed the local option tax to report his sales for purposes of the 1% sales and use taxes?

A. 1% Sales Tax: A retailer located in a county that has not imposed the 1% sales and use tax is not subject to the 1% sales tax.

1% Use Tax: A retailer located in a county that has not imposed the 1% sales and use tax who makes deliveries into a local option tax county is required to collect the other county's 1% use tax, if certain criteria are met. (See Question #3.)

Sales upon which a retailer is required to collect the 1% use tax are to be reported by county and municipality of delivery on Form ST-389, which is to be attached to the appropriate sales and use tax return.

3. Q. What are the criteria that must be met to require a retailer to collect a county's 1% use tax?

A. Whether or not a retailer can be required to collect a county's 1% use tax is dependent upon the controlling facts and the extent of the seller's activities within the county into which tangible personal property is delivered.

Retailers Using Their Own Vehicles: A retailer can be required to collect a county's 1% use tax if the retailer is shipping property into the county, using his own vehicles (whether owned or leased), and any one of the following criteria is met:

- (a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property in the county.
- (b) The retailer or a subsidiary has, temporarily or permanently, an agent, salesman, or employee operating within the county.
- (c) The retailer advertises, on a regular basis, via advertising media located in the county (e.g. newspapers, television, radio).
- (d) The retailer advertises, on a regular basis, via advertising media located outside the county but which has extensive coverage within the county.

Retailers Using Other Than Their Own Vehicles: A retailer can be required to collect a county's 1% use tax if the retailer is shipping property into the county, using other than his own vehicles (e.g. common carrier, UPS, the mail), and any one of the following criteria is met:

- (a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property in the county.
- (b) The retailer or a subsidiary has, temporarily or permanently, an agent, salesman, or employee operating within the county.

Other Situations: All other situations must be considered on a case-by-case basis, in light of current case law.

NOTE: If upon being audited, it is found a retailer has sufficient activities in a particular county to require him to collect that county's 1% use tax, but has failed to collect that county's 1% use tax on any taxable sales, the Tax Commission may assess the retailer for that county's 1% use tax.

- 4. Q. May an in-state retailer, who does not have sufficient activities in a particular local option tax county to require the retailer to collect that county's 1% use tax, voluntarily collect that county's 1% use tax?
 - A. Yes. If a retailer voluntarily collects the 1% use tax, he has an obligation to remit the tax to the Tax Commission.

OUT-OF-STATE RETAILERS - REPORTING REQUIREMENTS :

- 5. Q. How are out-of-state retailers (nonresident retailers) to report their sales?
 - A. Nonresident retailers are required to "identify the county or municipality in the county area in which tangible personal property purchased at retail is stored, used or consumed in this State" (Code Section 4-10-20).

PURCHASERS - REPORTING REQUIREMENTS :

- 6. Q. The liability for the 1% use tax, as with the 5% state use tax, is on the purchaser. The retailer may, however, be required to collect the tax from the purchaser. If the retailer does not collect the 1% use tax from the purchaser, then the purchaser must pay the tax directly to the Tax Commission on his return.

In those situations where the retailer does not collect the 1% use tax, how is the purchaser to report the tax?

- A. Purchases from Outside South Carolina: Purchases of tangible personal property (not for resale) from outside South Carolina, first stored, used or consumed in a local option tax county, are subject to the 1% use tax, in addition to the 5% state use tax. Such purchases are to be reported by county and municipality where the property is first stored, used or consumed.

Purchases from Inside South Carolina: Purchases of tangible personal property (not for resale) from one county, which is first stored, used or consumed in another county, are subject to the 1% use tax if stored, used or consumed in a local option tax county. Such purchases are to be reported by county and municipality where the property is first stored, used or consumed.

NOTE: The purchaser is not liable for a county's 1% use tax if he takes delivery in another county and pays the other county's 1% sales tax. Also, the purchaser is relieved of the liability for the 1% use tax if he has a receipt from a retailer showing the retailer has collected the 1% use tax from the purchaser.

ARTISTS, CRAFTSMEN & TRANSIENT OR TEMPORARY RETAILERS:

7. Q. How are "artists and craftsmen" licensed under Code Section 12-36-510(A)(2) and "transient or temporary" retailers licensed under Code Section 12-36-510(A)(3) to report their sales?
- A. Such retailers are to report their sales by municipality and county where delivery is made. (See Questions #1 and #2.)

WITHDRAWALS FOR USE:

8. Q. Code Section 12-36-110(c) defines "retail sale" to include "the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale". How are such "retail sales" to be reported?
- A. These retail sales are to be reported by county and municipality where the property is first withdrawn, used or consumed.

SALES MADE VIA OUTSIDE SALESMEN:

9. Q. How are in-state retailers to report sales made as a result of orders taken by outside salesmen?
- A. Such retailers are to report their sales by municipality and county where delivery is made. (See Questions #1 and #2).

10. Q. How are in-state retailers to report sales made by outside salesmen who, at the time of taking the order, also deliver the merchandise to the customer?
- A. Such retailers are to report their sales by municipality and county where delivery is made. (See Questions #1 and #2).
11. Q. How are out-of-state retailers who solicit orders via salesmen to report their sales?
- A. Such retailers are to report their sales by municipality and county where delivery is made. If the property is delivered into a local option tax county, then the sale is subject to the 1% use tax. If the property is delivered into a county that has not imposed the local option tax, then the 1% use tax is not due. (See Question #5.)

"DIRECT PAY" CERTIFICATES:

12. Q. What effect, if any, does the use of a "direct pay" exemption certificate (Code Section 12-36-2510) have on the reporting of the 1% sales and use tax?
- A. By using a so-called "direct pay" exemption certificate, a taxpayer can make all purchases tax free and must pay any taxes due directly to the Commission. The taxpayer is liable for any taxes due and the tax (sales or use) is due upon the property being "withdrawn, used or consumed by the taxpayer". For purposes of the 1% sales and use tax, such withdrawals, use or consumption are reportable by county and municipality where the property is first withdrawn, used or consumed.
13. Q. For those taxpayers who use a "direct pay" exemption certificate, what is the effect on the 1% sales and use tax if the property is merely transferred from one locale to another? By "transferred", it is meant the property is not withdrawn from inventory for use or consumption, but is merely moved from one location to another.
- A. Merely transferring property from one locale to another does not trigger the tax. The tax is due when the property is withdrawn, used or consumed by the taxpayer and such use or consumption is reportable by the county and municipality where first withdrawn, used or consumed.

"LIMITED" EXEMPTION CERTIFICATES:

14. Q. What effect, if any, does use of a "limited" exemption certificate have on the reporting of the 1% sales and use tax?
- A. Unlike a "direct pay" exemption certificate, which allows the holder to make all purchases free of the tax, a so-called "limited" exemption certificate only allows specific items, which are exempt under Code Section 12-36-2120, to be purchased tax-free.

If the holder of the limited exemption certificate purchases an item which falls within an exemption provided by Code Section 12-36-2120, then the purchase is exempt from the 5% state tax and the 1% local tax.

However, if the holder uses the certificate to purchase an item not exempt under Code Section 12-36-2120, then the holder of the certificate is liable for any tax due upon the property being withdrawn, used or consumed. For purposes of the 1% sales and use tax, such withdrawals, use or consumption are reportable by county and municipality where the property is first withdrawn, used or consumed.

TRANSACTIONS NOT SUBJECT TO THE 1% TAX:

15. Q. Are there any transactions which are not subject to the 1% sales and use tax?

A. Yes. The following transactions are exempted or excluded from the 1% sales and use tax:

- (1) Sales of "items with a maximum tax levied in accordance with [Section 12-36-2110]" are exempt from the 1% tax.

"Items with a maximum tax" are aircraft, motor vehicles, motorcycles, boats, trailers and semitrailers pulled by truck tractors, self-propelled light construction equipment, unassembled aircraft, mobile homes, and musical instruments and office equipment purchased by certain religious organizations.

- (2) Transactions subject to the Casual Excise Tax under Article 17 of Title 12 are exempt from the 1% tax.

That Article imposes "an excise tax for the issuance of every certificate of title, or other proof of ownership, for every motor vehicle, motorcycle, boat, motor, or airplane, required to be registered, titled, or licensed".

- (3) Those transactions exempted or excluded from the imposition of the 5% state sales or use tax are exempt from the 1% tax.

NOTE: Sales of trailers that can be pulled by vehicles other than truck tractors, and sales of pole trailers, are not exempt from the 1% local sales and use taxes.

CONSTRUCTION CONTRACTS:

16. Q. How does the 1% sales and use tax apply to construction contracts?

A. Section 4-10-25 provides "[t]he gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under Section 4-10-20 in a county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date culminating in a construction contract

entered into before or after the imposition date are exempt from the local sales and use tax provided a verified copy of the contract is filed with the South Carolina Tax Commission within six months after the imposition of the local option sales and use tax".

For information on how to apply for the above exemption, see SC Information Letter #91-27.

1% Sales Tax:

For those transactions which are not exempt under the provisions of Code Section 4-10-25 (see above), the 1% sales tax is reportable by the contractor's supplier in the county and municipality where the tangible personal property is delivered.

If the property is delivered within the county in which the supplier is located, and that county has imposed the 1% tax, then the 1% sales tax is due. If the property is delivered within the county in which the supplier is located, and that county has not imposed the tax, then the 1% sales tax is not due.

1% Use Tax:

For those transactions which are not exempt under the provisions of Code Section 4-10-25 (see above), the 1% use tax is reportable by county and municipality where the property is first stored, used or consumed.

The liability for the 1% use tax, as with the 5% state use tax, is on the contractor. The supplier may, however, be required to collect the tax from the contractor. (See Questions #1 - #5.)

If the contractor takes delivery in one local option tax county and pays that county's 1% sales tax to the supplier, he is not liable for the 1% use tax if he takes the property to another local option tax county and stores, uses or consumes the property in that county.

Also, the contractor is relieved of the liability for the 1% use tax if he has a receipt from the supplier showing the supplier has collected the 1% use tax from the contractor.

17. Q. Code Section 12-36-110(1)(d) includes in the definition of "retail sale" "the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract".

How are such businesses, which are generally referred to as "manufacturer/contractors", to report these "retail sales"?

A. "Manufacturer/contractors" are to report the 1% sales or use tax by county and municipality where the property is used or consumed - the location of the construction site.

VENDING MACHINE OPERATORS

18. Q. How are businesses that make sales from vending machines to report their sales?

A. 1% Sales Tax:

Items to be sold from vending machines, except for cigarettes and soft drinks in closed containers, purchased from suppliers located in a local option tax county are subject to the 1% sales tax if delivered to the vending machine operator in that county. The vending machine operator's supplier is liable for the tax on such sales and is to account for his sales by the county and municipality where the property is delivered to the vending machine operator.

Sales of cigarettes and soft drinks in closed containers are subject to the 1% sales tax upon being sold from the vending machines, if the machines are located in a local option tax county. The liability for the tax is on the vending machine operator and he is to account for such sales by county and municipality in which the vending machines are located.

1% Use Tax:

Items to be sold from vending machines, except for cigarettes and soft drinks in closed containers, which are purchased from suppliers located outside the State or outside the local option tax county, are subject to the 1% use tax. The vending machine operator is not liable for the county's 1% use tax if he takes delivery in another county and pays the other county's 1% sales tax.

If the supplier (whether in-state or out-of-state) does not collect the 1% use tax from the vending machine operator (who is liable for the 1% use tax), or the 1% sales tax is not paid, then the vending machine operator is to pay the tax directly to the Tax Commission on his return. (See Question #6)

Purchases of cigarettes and soft drinks in closed containers for sale from vending machines are not subject to the 1% use tax. The 1% sales tax is due upon such items being sold from machines located in a local option tax county. The liability for the 1% sales tax is on the vending machine operator. Again, such sales are to be accounted for by county and municipality where the machines are located.

UTILITIES

19. Q. How are utilities to report the 1% sales or use tax?

- A. Code Section 4-10-20 requires utilities "to report sales in the county or municipality in which consumption of the tangible personal property occurs". In other words, utilities are

to report their sales by county and municipality where their customers are located.

20. Q. For purposes of question #19, what is a "utility"?

- A. A "utility" is an entity which sells products or services subject to the 5% state sales and use tax and transmits or delivers its products or services via electronic transmissions or pipelines (i.e. electric and gas companies, telephone companies, cable TV companies and other communications companies).

NOTE: Entities which sell water via pipelines to the public are also "utilities"; however, their sales are exempt from the 5% sales and use tax.

BUSINESSES WHICH BILL ON A MONTHLY BASIS:

21. Q. For those taxpayers who sell and bill their services on a monthly basis (i.e. electric utilities and cable TV companies), when are they to begin reporting the 1% sales or use tax?

- A. Section 4-10-100 requires such persons to report the 1% tax "beginning on the first day of the billing period beginning on or after the date of general imposition". The phrase "date of general imposition" means the date the 1% tax becomes effective in a particular county (e.g. July 1, 1991).

For example, if an electric power company has a billing period ending July 10, 1991, the first "billing cycle" subject to the 1% tax would be the period beginning July 11, 1991. The period July 1st through July 10th would not be subject to the 1% tax.

LEASES:

22. Q. If tangible personal property is leased prior to the imposition date of the 1% tax in a local option tax county and the lease period extends beyond the imposition date, does the 1% sales or use tax apply to those lease payments made after the imposition date?

- A. No. The 1% sales or use tax would not apply to those lease payments made after the imposition date on leases entered into before the imposition date of the 1% local option tax.

NOTE: For more information concerning leases, see SC Revenue Ruling #91-9.

INSTALLMENT SALES:

23. Q. Code Section 12-36-2560, which concerns sales made on an installment basis, allows a retailer to 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".

If the retailer has elected to pay the tax as payments are received, are payments received

after the imposition date of the 1% tax subject to the 1% sales or use tax?

- A. For sales made after the imposition date, the 1% sales or use tax applies to all payments received. For sales made before the imposition date, the 1% sales or use tax would not apply.

For those sales made on or after the imposition date of the 1% tax, and on which the retailer does not collect the 1% use tax from the purchaser (if he delivers to the purchaser in a local option tax county), the purchaser must pay his county's 1% use tax on his return directly to the Tax Commission. If the purchaser must pay the 1% use tax, the tax is due on the entire purchase price. The purchaser may not pay the 1% use tax as payments are made to the retailer.

ACCOMMODATIONS:

24. Q. Does the 1% sales tax apply to charges for accommodations? See Code Section 12-36-920(A).

A. Yes. The 1% sales tax applies to charges for accommodations.

25. Q. Does the 1% sales tax apply to "additional guest charges", as defined at Code Section 12-36-920(B)?

A. Yes. The 1% sales tax applies to charges for "additional guest charges".

26. Q. How are taxpayers who are subject to the sales tax on accommodations and "additional guest charges" to report the 1% sales tax if they own or manage rental units in different counties or municipalities?

A. Section 4-10-20 provides that such taxpayers "shall report separately in [their] sales tax return[s] the total gross proceeds from business done in each county or municipality", using Form ST-389.

CREDIT FOR SALES AND USE TAXES PAID IN ANOTHER STATE:

27. Q. May credit be taken against the 1% use tax for sales and use tax due and paid in another state?

A. Yes. Credit may be taken against the 1% use tax for sales and use tax due and paid in another state, as provided below:

- (1) If the total tax due and paid in another state (state plus local) is less than 6% and property is stored, used or consumed in a South Carolina county which has imposed the 1% use tax, then the use tax owed in South Carolina is to be allocated 5/6 to the State and 1/6 to the county.

For example, Georgia has a 4% state tax and a 1% local tax; therefore, if a taxpayer makes a purchase in Georgia with a sales price of \$1,000, upon which the 5% tax was due and paid in Georgia, and stores, uses or consumes the property in a South Carolina county which has imposed the 1% use tax, the difference owed in South Carolina (1%) is to be allocated as follows -

$$\text{State portion} = 5/6 \text{ times } 1\% \text{ times } \$1,000 = \$ 8.30$$

$$\text{Local portion} = 1/6 \text{ times } 1\% \text{ times } \$1,000 = \underline{1.70}$$

$$\text{Total due} \qquad \qquad \qquad \$10.00$$

=====

- (2) If the total sales and use taxes due and paid in another state (state plus local) is greater than 6%, no tax will be due in South Carolina (either state or local).
- (3) If the property is stored, used or consumed in a S.C. county which has not imposed the 1% sales and use tax, credit will be allowed against the 5% state use tax up to the amount of state and local taxes due and paid in the other state.

NOTE: If the purchaser takes delivery of tangible personal property in a local option tax county and pays that county's 1% sales tax, the purchaser is not liable for the 1% use tax if the property is first stored, used or consumed in another local option tax county.

REFUNDS OF THE STATE & LOCAL SALES AND USE TAXES:

28. Q. If a retailer pays taxes which should not have been paid, who is entitled to a refund - the retailer or the purchaser?

A. Sales Made By In-State Retailers. If a retailer is located in a local option tax county and delivers property in that county, the retailer may receive a refund for the 5% state sales tax and the 1% county sales tax, if the tax should not have been paid.

If an in-state retailer delivers property into a local option tax county, the retailer may receive a refund for the 5% state sales tax, if the tax should not have been paid. The retailer may not, however, receive a refund for the 1% use tax.

The purchaser is the taxpayer for purposes of the 1% use tax and is, therefore, the only one entitled to the refund for the 1% use tax. To receive the refund, the purchaser must have documentation showing he has paid the 1% use tax to the retailer.

Sales Made By Out-of-State Retailers. If an out-of-state retailer delivers property into a local option tax county, the retailer may not receive a refund for the 5% state use tax or the 1% county use tax, if the tax should not have been paid.

The purchaser is the taxpayer for purposes of the 5% state use tax and the 1% county use tax and is, therefore, the only one entitled to the refund for the State and county use taxes. To receive the refund, the purchaser must have documentation showing he has paid the State and county use taxes to the retailer.

How To Request A Refund. Taxpayers who are entitled to a refund of the 1% local option tax may send a letter to:

S.C. Tax Commission
Office Audit - Sales Tax
P.O. Box 125
Columbia, S.C. 29214

This letter must contain:

- (1) the taxpayer's name, address, telephone number and retail license number;
- (2) reason(s) for the refund; and
- (3) a schedule showing (by month) a breakdown by county and municipality where the tax was originally reported. This schedule must also show the type tax (sales or use) and amount to be refunded.

All refunds are subject to verification by audit, either before or after issuance.

For assistance in requesting a refund, taxpayers should contact Mr. Larry Strickland at (803) 737-4788.

HOW TAXES SHOULD BE SHOWN ON BILLINGS TO CUSTOMERS:

29. Q. Are retailers required to show the 5% state tax and the 1% local tax separate from the sales price on billings to their customers?

A. Both the state and local sales taxes are the liability of the retailer. Code Section 12-36-940 allows, but does not require, the retailer to include in the sales price the amount of the sales tax.

The state and local use taxes are the liability of the purchaser. Code Section 12-36-1350 requires the retailer to "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".

Sales By In-State Retailers. An in-state retailer located in a local option tax county, and making deliveries in that county, is not required to separately show either the 5% state sales tax or the 1% local sales tax from the sales price on billings to his customers. The retailer, however, does have the option under Code Section 12-36-940 to separately show the sales taxes from the sales price.

An in-state retailer making deliveries into a local option tax county is not required to separately show the 5% state sales tax from the sales price. The retailer, however, does have the option under Code Section 12-36-940 to separately show the sales tax from the sales price. However, if he collects the 1% use tax, he is required to separately show the 1% use tax from the sales price.

Sales Made By Out-of-State Retailers. An out-of-state retailer making deliveries into a local option tax county is required to separately show the 5% state use tax and the 1% local use tax from the sales price on billings to his customers. The retailer is not required to separate the two taxes. He can just show a 6% South Carolina tax was collected.

OTHER INFORMATION:

30. Q. Is the 1% sales or use tax to be considered in determining whether or not a taxpayer is required to pay estimated taxes?

A. No. Code Section 12-36-2600 was amended to specifically exclude the 1% sales and use tax from the estimated tax provisions.

31. Q. Do the discount provisions for filing and paying timely (Code Section 12-36-2610) apply to the 1% sales and use tax?

A. Yes. Code Section 12-36-2610 allows the discount on returns "required by Section 12-36-2570 [state tax] and Chapter 10 of Title 4 [1% sales and use tax]".

32. Q. If the answer to question #31 is "yes", how is the discount amount(s) to be computed?

A. The discount amount is to be computed by applying the appropriate discount rate to the total tax due on the return (the 5% state combined with the 1% local tax).

The discount allowed is 3% if the total tax liability on a return is less than \$100; and 2% if the total tax is \$100 or more.

The total discount amount for a particular taxpayer (state plus local) cannot exceed \$10,000 during any one state fiscal year.

33. Q. Is the 1% sales and use tax to be considered in determining whether or not a taxpayer may be permitted to file a quarterly return?

A. Yes. The 1% sales and use tax should be considered in determining whether or not a taxpayer may be permitted to file a quarterly return. In other words, the 1% tax should be added to the state tax liability.

34. Q. Do the penalty and interest provisions of Chapter 54 of Title 12 apply to the 1% sales and use tax?

- A. Yes. Section 4-10-20 provides that the 1% sales and use tax are "subject to...the enforcement provisions of Chapter 54 of Title 12".
35. Q. Are the penalties and interest to be applied to the 1% sales and use tax separately from the state tax?
- A. Yes. Penalties and interest are to be applied to the 1% sales and use tax separately from the state tax.
36. Q. Is the 1% local option tax to be considered in computing warrant costs, pursuant to Code Section 12-53-40?
- A. Yes. Pursuant to Code Section 12-53-40, warrant costs are to be computed on "the total of the warrant or tax execution".
37. Q. Are warrant costs shared with the counties?
- A. No. Warrant costs are collected from taxpayers for costs incurred by the State in collecting warrants and tax executions. This money is deposited into the general fund of the State, and is not "revenues collected by the Tax Commission on behalf of [the counties]....to be credited to [the] Local Sales and Use Tax Fund which is separate and distinct from the state general fund". Code Section 4-10-90(B).

PROPERTY TAX

38. Q. In computing the credit against the property tax provided by Code Section 4-10-40(B), is the \$20,000 "homestead exemption" amount (Code Section 12-37-250) to be included in "taxable property"?
- A. No. The \$20,000 "homestead exemption" amount is not to be included in "taxable property".
39. Q. In computing the credit against the property tax provided by Code Section 4-40-40(B), what value is to be placed on agricultural real property?
- A. The value to be placed on agricultural real property is the property's "fair market value for agricultural purposes", as defined by Code Section 12-43-220.
40. Q. Code Section 4-10-90(B) requires the revenue generated from the 1% sales and use tax to be allocated to the Property Tax Credit Fund and the County/Municipal Revenue Fund, during the first year after the effective date of the act, in a ratio of 63% to 37%. Over the next four years, the percentage going to the Property Tax Credit Fund will increase, while the percentage going to the County/Municipal Revenue Fund will decrease. During the fifth year, the percentages will level out at 71% and 29%, respectively.

If a county imposes the 1% tax for a year other than the first year (July 1, 1991 through June 30, 1992), which percentages are to be used for allocation purposes - 63% and 37% (the first year's percentages) or the applicable percentages in effect for the year of imposition?

- A. If the 1% tax is imposed for a year other than the first year after the effective date of the act (July 1, 1991 through June 30, 1992), the allocation percentages to be used are those in effect for the year imposed. For example, if the tax is imposed in a county starting January 1, 1998, 71% of the revenue from the 1% tax is to be allocated to the Property Tax Credit Fund and 29% to the County/Municipal Revenue Fund.

NOTIFICATION OF IMPOSITION OF THE 1% TAX

- 41. Q. When are those counties which approve the 1% tax in a year subsequent to the first referendum year (1990) to notify the Tax Commission and the State Treasurer that they have adopted a resolution to impose the 1% sales and use tax?
 - A. For those counties approving the referendum in subsequent years, a certified copy of the resolution adopting the tax must be delivered to the Tax Commission by December 31st, following the referendum.

The tax will become effective May 1st of the following year, if the resolution is timely delivered to the Tax Commission. Failure to deliver the resolution by December 31st will cause delay of the imposition date until May 1st of the next year.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

T.R. McConnell, Commissioner

Columbia, South Carolina
September 25, 1991