

Exemptions and Exclusions

In determining whether a transaction is taxable, you must first determine whether the transaction is *subject to* the tax. For example, all retail sales in South Carolina are *subject to* the sales tax, but not wholesale sales. Having determined that a transaction is *subject to* the tax (i.e. a retail sale) - and therefore **not excluded** from the tax - it must be determined if the transaction is **exempted** from the tax.

More on exclusions

Exclusions from the sales and use taxes are to be liberally construed. In other words, if there is doubt concerning whether a particular transaction is subject to tax, then the tax is **not** to be imposed.

The exclusions are found in several sections of the law and concern a variety of transactions. The list below provides the code section in which the exclusion is found and a brief explanation of the exclusion.

Code Section	Explanation
12-36-60	Transmission of computer database information by a cooperative service when assembled by and for the exclusive use of the members of the cooperative service.
12-36-110(2)	Sales of tangible personal property to a manufacturer or construction contractor when the property is partially or completely fabricated or manufactured in South Carolina by the manufacturer or construction contractor and transported out of state and assembled, installed or erected at the out-of-state job site.
12-36-120(1)	Sales of property to a licensed retailer or another wholesaler for resale. This does not include sales to users or consumers not for resale.
12-36-120(2)	Sales of property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or product manufactured or compounded for sale.

- 12-36-120(3) Sales of property “used directly” in manufacturing, compounding or processing tangible personal property into products for sale. Regulation 117-174.30 provides that property is “used directly” if it comes into direct contact with the product being manufactured and contributes to bring about a chemical or physical change in the product.
- 12-36-120(4) Sales of materials, containers, cores, labels, sacks or bags used incident to the sale and delivery tangible personal property, or used by manufacturers, processors and compounders in shipping tangible personal property.
- 12-36-120(5) Sales of food or drink products to licensed retail merchants for use as ingredients in preparing ready to eat food or drink sold at retail.
- 12-36-140(C) Purchases of tangible personal property from outside the state and transported to South Carolina for storage and for the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina.
- 12-36-140(C) Purchases of tangible personal property from outside the state and transported to South Carolina for the purpose of first being manufactured, processed or compounded into other tangible personal property that will be transported and used solely outside of South Carolina.
- 12-36-910(C) Charges for or use of certain data processing.

NOTE: There is one other partial exclusion provided under the law. Taxable sales to individuals 85 years of age or older are taxed at 4%, not the full rate of 5%. This exemption applies even if other sales tax exemptions are in place. Effective June 1, 2007, taxable sales to individuals 85 years of age or older are taxed at 5%, not the full rate of 6%.

More on exemptions

Unlike exclusions, which are liberally construed in favor of the taxpayer, exemptions are strictly construed **against** the taxpayer. Therefore, to enjoy an exemption, a taxpayer must fall squarely and clearly within the exemption.

There are two types of exemptions provided under the sales and use tax law - (1)

partial exemptions and (2) full exemptions. *Partial exemptions* are those that limit or “cap” the amount of tax and are found in §12-36-2110. The 1% local option sales and used tax does not apply to sales that are subject to a cap. There also is a partial exemption for people 85 years old and older who are exempt from paying the 1% sales tax imposed by the Education Improvement Act of 1984 as found in §12-36-2620.

There are many *full exemptions*, which are found in §12-36-2120 and §12-36-2130. The 1% local option sales and use tax does not apply to sales which are exempt from the 5% state sales and use tax.

Partial exemptions (caps)

A maximum tax of \$300 is imposed on the following sales:

- ▶ Aircraft - This includes unassembled aircraft assembled by the purchaser.
- ▶ Motor vehicles
- ▶ Motorcycles
- ▶ Boats
- ▶ Trailers and semi-trailers that can be pulled only by a truck tractor and horse trailers. This does not include house trailers and campers as defined in §56-3-710
- ▶ Recreational vehicles - This includes tent campers, travel trailers, park trailers, motor homes and fifth wheels.
- ▶ Self-propelled light construction equipment with compatible attachments – The equipment, in order to qualify for the cap, cannot have a maximum net engine horse power of more than 160.
- ▶ Musical instruments or office equipment sold to religious organizations.
- ▶ Equipment provided or installed on a fire truck included in the purchase price at the time of the sale. The cap does not apply to firefighter’s protective clothing.
- ▶ Fire safety education trailers.



The maximum cap also applies to leases of the above items, if the lease has a stated term in excess of 90 continuous days and remains in force for the stated period. The taxpayer may pay the total tax due at the time the lease is executed

or with each lease payment until the \$300 is paid.

Special rules apply to the sale of mobile homes. Consult one of the Department of Revenue's Taxpayer Service Centers for assistance in calculating the sales tax on mobile home sales.

Full exemptions

The full or regular exemptions can be divided into the following categories:

- ▶ Government
- ▶ Business
- ▶ Agricultural
- ▶ Educational
- ▶ General public good

NOTE: These exemptions are not categorized as such in the law. These categories have been developed simply for discussion.

Government

Code Section	Brief Description
12-36-2120(1)	Transactions that are prohibited from being taxed by U.S. or state Constitutional provisions or federal provisions
12-36-2120(2)	Sales to federal government (vendor tax)
12-36-2120(22)	Material necessary to assemble missiles
12-36-2120(25)	Sales of cars to nonresident military personnel
12-36-2120(29)	Federal government contracts
12-36-2120(30)	Supplies purchased by State General Services Division for resale to state

agencies

12-36-2120(46)

War memorials and monuments

Business Incentives

Code Section	Brief Description
12-36-2120(9)	Coal, coke, fuel for manufacturers, transportation companies, electric power companies, processors
12-36-2120(11)	Long-distance telephone calls, access charges and charges for telegraph messages, transactions at automatic teller machines
12-36-2120(13)	Fuel for ships on high seas
12-36-2120(14)	Wrapping paper, containers, etc. used incident to sale and delivery of tangible personal property
12-36-2120(15)	Motor fuel taxed under the motor fuel tax law
12-36-2120(17)	Machines used to manufacture, process, recycle, compound, mine or quarry tangible personal property for sale, prevent and abate pollution
12-36-2120(19)	Electricity used to manufacture, process, mine or quarry tangible personal property for sale or used by cotton gins to manufacture tangible personal property for sale
12-36-2120(20)	Railcars, locomotives, engines, parts
12-36-2120(21)	Certain vessels and barges
12-36-2120(24)	Laundry supplies and machinery (services are taxed under the law)
12-36-2120(31)	Vacation time-share leasing plans

12-36-2120(34)	Partial exemption for modular homes (50%)
12-36-2120(35)	Movies sold or rented to movie theaters (movie theaters are subject to the admissions tax)
12-36-2120(36)	Tangible personal property delivered out of state by South Carolina retailers
12-36-2120(37)	Petroleum asphalt products transported and used outside South Carolina
12-36-2120(40)	Shipping containers used by international shipping lines under contract with State Ports Authority
12-36-2120(42)	Sale of depreciable assets as a result of a sale of an entire business
12-36-2120(43)	Supplies, equipment, machinery for use in filming/producing motion pictures
12-36-2120(50)	The following when used by a qualified recycling facility: recycling property; electricity, natural gas, fuels, gasses, fluids and lubricants; ingredients or component parts of manufactured products; property used to handle or transfer post consumer waste or manufactured products, or in the manufacturing process; and machinery and equipment foundations.
12-36-2120(51)	Material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility
12-36-2120(52)	Parts and supplies used in the business of repairing or reconditioning aircraft owned by or leased to the federal government or commercial air carriers. This exemption does not extend to tools and other equipment not attached to or that become a part of the aircraft.

12-36-2120(53)	Motor vehicle extended service contracts
12-36-2120(54)	Clothing required for working in a clean room environment
12-36-2120(55)	Audio/visual masters made or used by a production company in making visual and audio images for first generation reproduction
12-36-2120(56)	Machines used in research and development. <i>(Effective for tax years beginning after June 30, 2001)</i>
12-36-2120(58)	Cooperate direct mail promotional advertising materials delivered by means of interstate carrier, a mailing house or a United States Post Office to residents of this South Carolina from locations both inside and outside the state. Promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or convention and visitor bureaus
12-36-2120(59)	Facilities for transmitting electricity which is transcended, sold or exchanged by electric utilities, municipalities, electric co-operative or political subdivisions to a limited liability company which is subject to regulations under the Federal Power Act (16 U.S.C. Section 791(a)).
12-36-2120(60)	Lottery tickets sold in accordance with Chapter 150 of Title 59
12-36-2120(64)	Sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass

Agricultural

Code Section	Brief Description
12-36-2120(4)	Livestock
12-36-2120(5)	Feed used to produce and maintain livestock
12-36-2120(6)	Insecticides, chemicals, fertilizers, soil conditioners, seeds, seedlings or nursery stock used in the production of farm products
12-36-2120(7)	Containers and labels used in preparing agriculture products for sale; turpentine gum, gum resin and gum spirit of turpentine
12-36-2120(15)(c)	Fuel used in farm machinery and farm tractors
12-36-2120(15)(d)	Fuel used in commercial fishing vessels
12-36-2120(16)	Farm machinery
12-36-2120(18)	Fuel used to cure agriculture products
12-36-2120(23)	Farm products sold in their original state of production when sold by producer
12-36-2120(32)	Electricity and gas used in the production of livestock and milk
12-36-2120(44)	Electricity used to irrigate crops
12-36-2120(45)	Building materials, supplies, fixtures and equipment used to construct commercial housing for poultry or livestock

Educational

Code Section	Brief Description
12-36-2120(3)	Textbooks, books, magazines, periodicals, newspapers and access to on-line information for use in a course of study or for students' use in the school library sold to public and private schools and colleges and public libraries. These items may be in printed form or in alternative forms such as audio tapes, videotapes, microfilm or CD ROM information
12-36-2120(8)	Newspapers
12-36-2120(10)(a)	Meals sold to students in schools (not for profit)
12-36-2120(26)	Television, radio and cable TV supplies, equipment, machinery and electricity
12-36-2120(27)	Zoo plants and animals
12-36-2130(2)	Exhibition purchases or rentals for museums (charitable, eleemosynary, governmental museums) (USE TAX only)
Budget Proviso	Property purchased for use in private primary and secondary schools, including kindergartens and early childhood education programs, for entities exempt from income taxes under IRS Code 501(c)(3) (USE TAX only)

General Public Good

Code Section	Brief Description
12-36-2120(10)(b)	Meals provided to elderly or disabled persons at home by nonprofit organization
12-36-2120(10)(c)	Food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization
12-36-2120(10)(d)	Meals and foodstuffs sold to organizations for service to homeless or needy or certain adults
12-36-2120(12)	Water sold by public utilities. (Note: Bottled water sold in retail stores is taxable.)
12-36-2120(28)	Medicine and prosthetic devices sold by prescription; certain free samples of medicine and certain medicine donated to hospitals; medicines used in treating cancer and other related diseases
12-36-2120(28)(b)	Hypodermic needles, insulin, swabs, strips and diabetic supplies sold to diabetics
12-36-2120(28)(c)	Disposable medical supplies such as bags, tubing, needles and syringes which are dispensed by a licensed pharmacist
12-36-2120(28)(d)	Medicine donated by manufacturer for research or treatment of indigent patients
12-36-2120(28)(e)	Dental prosthetic devices
12-36-2120(33)	Residential electricity and fuel, kerosene and LP gas of 20 gallons or less
12-36-2120(38)	Hearing aids

12-36-2120(39)	Concession sales by nonprofit organizations at a festival
12-36-2120(41)	Sales by nonprofit organizations
12-36-2120(47)	Goods sold to nonprofit hospitals which primarily treat children at no cost to the patient

NOTE: Each exemption must be read in its entirety for complete details. The above explanations are intended only as general information.