

# SALES AND USE TAX GUIDELINES

May 2010

## OVERVIEW

Sales and use taxes, used exclusively for education, are an important component of the state's annual budget. **South Carolina's state sales and use tax rate is 6%.**

**Sales tax** is imposed on all retail sales of tangible property within the state. Retailers selling tangible property within the state of South Carolina are required to remit the sales tax to the Department of Revenue.

**Use tax** applies to purchases from out-of-state retailers and is imposed on all purchases of tangible property purchased for use, storage, or consumption within the state of South Carolina, and includes purchases from retailers made via the Internet (retailers' websites and retailers' sales on auction sites), through out-of-state catalog companies, or when visiting another state or another country. Use tax is the responsibility of the purchaser.

*"Tangible property"* means property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes certain services and intangibles, including communications, laundry and related services, *furnishing of accommodations*, (e.g. hotels, motels), and sales of electricity.

## RECORD KEEPING AND PAYMENT OF TAX

Consumers must keep records, receipts, invoices (containing the name and address of the vendor) and other pertinent papers documenting payment of sales and use tax for a period of three years.<sup>1</sup> Persons or entities (e.g. Tri-County Technical College) purchasing tangible property subject to sales and use tax, which have not paid such tax to the seller required to collect it, must file a return and pay the tax to the Department of Revenue.

## SPECIFIC APPLICATIONS OF SALES AND USE TAX

**Administrative fees** When a vendor charges an administrative fee<sup>2</sup> associated with the purchase of tangible property, then the administrative fee is considered part of the tax base upon which the tax is calculated and is ***subject to tax***.

**Note:** If the purchase qualifies for an exemption, then administrative fees associated with the purchase are also exempt.

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<sup>1</sup> 2010 Sales and Use Tax Seminar Manual, pg. 12

<sup>2</sup> 2009 Sales and Use Tax Manual , Chap. 23, pg. 20

## Classroom Supplies

Textbooks, magazines, and periodicals<sup>3</sup> used as part of a course of study in elementary schools, high schools, and institutions of higher learning are **not subject to tax**. Included within the definition of “textbooks” are school library books, encyclopedias, and dictionaries. These items may be in printed form or in alternative forms such as audio tape, video tape, CD ROM, microfilm or microfiche. Also deemed “textbooks” when part of a prescribed course of study are workbooks, band and sheet music, plays, filmstrips, transparencies, motion picture films, audio tapes and records, recorded music and periodicals.

The following items do not qualify as “textbooks” as defined above, and are, therefore, **subject to tax**: Magazine subscriptions, reader guides (in connection with magazine subscriptions), test sheets, answer sheets, evaluation criteria, games, albums, pupil cumulative records, guide pamphlets, yearbooks, award certificates, diplomas, writing materials, art supplies, drafting supplies, easels, projectors, projector lamps and bulbs, projection screens and equipment carts or tables, magboards, flannel boards, laboratory supplies and equipment, biological supplies incidental to classroom instruction, athletic equipment, shop supplies and equipment, record players, recorders, computer instructional equipment, manipulated devices, charts, maps (including globes), map stands, raw film, blank tapes, and any and all other items of tangible property used in the classroom or office.

## Delivery Charges

(by whatever name, e.g., freight, shipping, transportation, shipping and handling, etc.)<sup>4</sup>

When a vendor charges the customer a delivery fee for **delivery via the seller’s own trucks**, then the delivery charge is considered part of the tax base upon which the tax is calculated and is **subject to tax**.

When the customer is charged for **delivery via common carrier** and the delivery terms are **FOB Destination**, then the delivery charge is considered part of the tax base upon which the tax is calculated and is **subject to tax**.

When a vendor charges the customer for **delivery via common carrier** and the delivery terms are **FOB Origin** (or FOB Shipping Point), then the delivery charge is not considered part of the tax base upon which the tax is calculated and is **not subject to tax**.

*FOB (Free On Board) is a transportation term that indicates that the price for goods includes delivery to a specified point and no further. The **FOB term is used** with an identified physical location **to determine the responsibility and basis for payment of freight charges**.*

*“FOB Origin” means Buyer owns the merchandise as soon as it leaves Seller’s location and Buyer is responsible for freight charges.*

*“FOB Destination” means Seller owns the merchandise until it is delivered to Buyer’s location and Seller is responsible for freight charges.*

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<sup>3</sup> SC Revenue Ruling #94-11

<sup>4</sup> 2009 SC Sales and Use Tax Manual, Chap. 23, pp.18-19

When the customer is charged for **delivery via common carrier** and the **delivery terms are not specified**, then the delivery charge is considered part of the tax base upon which the tax is calculated and is **subject to tax**.

**Note:** If the purchase qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any delivery charges associated with the exempt sale) is also exempt.

### **Food**

Sales of *unprepared* foods<sup>5</sup> are **exempt from tax**. However, local taxes still apply to sales of unprepared foods, unless the local tax law specifically exempts such sales.

### **Installation Charges**

When a customer is charged an installation charge<sup>6</sup> associated with the purchase of tangible property, the installation charge is ***not subject to tax provided*** the installation charge is **stated separately** on the customer's bill.

If the installation is **not separately stated** on the bill, the charge is considered part of the tax base upon which the tax is calculated and is ***subject to tax***.

**Note:** If the purchase qualifies for an exemption, then installation charges associated with the purchase are also exempt.

### **Internet Purchases**

Purchases of tangible property or a taxable service via the Internet<sup>7</sup> and delivered into South Carolina are ***subject to tax***.

Charges to **access the Internet** (e.g. through an Internet Service Provider) are ***not subject to tax***.

Charges to **access an individual website** are ***subject to tax***.

### **Labor**

When labor<sup>8</sup> is charged in association with the purchase of tangible property or a taxable service, then the charge is considered part of the tax base upon which the tax is calculated and is ***subject to tax***.

**Note:** If the purchase qualifies for an exemption, then any labor charges associated with the purchase are also exempt.

### **Out-of-State Purchases**

Purchases made from out-of-state<sup>9</sup> vendors for use, storage, or consumption in SC are ***subject to tax***, including purchases made via the Internet, through out-of-state catalogs, or when visiting another state.

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<sup>5</sup> 2010 Sales and Use Tax Seminar Manual, pg. 36

<sup>6</sup> 2009 Sales and Use Tax Manual, Chap. 23, pg.20

<sup>7</sup> 2009 Sales and Use Tax Manual, Chap. 23, pg. 28

<sup>8</sup> 2009 Sales and Use Tax Manual Chapter 23, pg. 19

<sup>9</sup> 2009 Sales and Use Tax Manual, Chap. 23, pg. 29-31

If purchaser paid sales tax to the other state, the SC purchaser would only owe the difference between the sales tax paid in the other state and the use tax due in South Carolina. (In other words, if the tax paid in another state is equal to or greater than the use tax due in South Carolina, then no use tax is due in South Carolina.)

*Example #1:* If a SC purchaser paid \$15.00 sales tax in the other state and the total use tax due in SC was \$18.00, the SC purchaser would be allowed credit for the \$15.00 and would only owe SC use tax of \$3.00

*Example #2:* If a SC purchaser paid \$21.00 sales tax in the other state and the total use tax due in SC was \$18.00, then the SC purchaser would be allowed credit for the \$21.00 and no SC use tax would be due, since the \$21.00 paid exceeds the \$18.00 due in South Carolina.

*Note:* Each transaction must stand on its own. In other words, an “excess” paid to another state on one purchase (as shown in Example #2) cannot be used to offset SC use tax that may be due on another purchase.

Purchase of an item that is exempt from SC sales tax is also exempt from use tax when purchased from an out-of-state vendor.

**Purchases from another State Agency**

Sales by a state agency to another state agency<sup>10</sup> are **subject to the sales and use tax**, unless the consideration for the transfer only reimburses the transferring agency for its cost and expenses in conveying the property and the transferring agency has paid tax on the initial purchase of the tangible personal property or the sale is exempt under the sales and use tax law (e.g., textbooks).

**Rentals or Leases**

The sales and use tax law defines the term “sale” to *include* rentals, leases, licenses to use,<sup>11</sup> or any other agreement; therefore any rental or lease of tangible property (or a taxable service) is **subject to tax**.

**Set-up Charges**

(e.g. screen printers, personalized items, etc.)  
When a customer is charged a set-up<sup>12</sup> in connection with the purchase of tangible property, then the set-up charge is considered part of the tax base upon which the tax is calculated and is **subject to tax**.

**Note:** If the purchase qualifies for an exemption, then set-up charges associated with the purchase are also exempt.

**Software**

Software<sup>13</sup> (canned or custom) **delivered by tangible means** (e.g. tape, disk) is **subject to tax**. Software **delivered by electronic means** from a remote location

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<sup>10</sup> 2009 Sales and Use Tax Manual, Chap.23, pg. 23

<sup>11</sup> 2009 Sales and Use Tax Manual, Chap. 23, pg. 18

<sup>12</sup> 2009 Sales and Use Tax Manual, Chap.23, pg. 20

<sup>13</sup> 2009 Sales and Use Tax Manual, Chap.23, pg. 22

is ***not subject to tax***, provided no part of the software, including back-up diskettes and tapes, is delivered by tangible means.

**Training Charges**

(e.g. hardware, software)

If a customer is charged a fee for training<sup>14</sup> associated with the purchase of tangible property, then the charge for training is considered part of the tax base upon which the tax is calculated and is ***subject to tax***.

**Note:** If the purchase qualifies for an exemption, then training fees associated with the purchase are also exempt.

**Travel Expenses**

***No tax is required*** on **airline tickets or conference registrations**; charges for **accommodations** are ***subject to tax***.

**Warranties & Maintenance**

The **purchase or renewal of warranty, maintenance, or similar service contracts**<sup>15</sup> for tangible property, whether or not such contracts are purchased in conjunction with the tangible property, is ***subject to tax***.

The purchase or renewal of a maintenance contract for computer software that was sold in *tangible* form (e.g., tape, disk) is ***subject to tax***.

The provisions of this imposition apply to *optional* warranty, maintenance or similar service contracts; however, it is important to note that charges for mandatory warranty, maintenance or similar service provided in conjunction with the sale of tangible property are ***subject to tax*** as part of the gross proceeds of sales of such tangible property.

***Tax does not apply*** to the sale or renewal of a warranty, maintenance, or similar service contract for tangible property ***if*** the purchase of the tangible property covered by the contract is exempt from the tax.

**ADDITIONAL INFORMATION**

The above explanations are provided for general information. Please contact Roberta Sitton (rsitton@tctc.edu or Extension 1804) or Cathy Strasser (cstrasse@tctc.edu or Extension 1848) if you have questions about particular transactions. You may also view the ***2009 SC Sales and Use Tax Manual*** and the ***2010 Sales and Use Tax Seminar Manual*** on the SC Department of Revenue website [www.sctax.org](http://www.sctax.org) for more complete details.

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<sup>14</sup> 2009 Sales and Use Tax Manual, Chap. 23, pg. 21

<sup>15</sup> 2009 Sales and Use Tax Manual, Chap. 2, pp. 6-7