

## South Carolina: Department of Revenue issues guidance on the application of sales and use tax



David M. Kall | Monday, July 18, 2016

Earlier this month, the South Carolina Department of Revenue (Department) issued three advisory opinions addressing the applicability of the sales and use tax. In the first, [Ruling # 16-6](#), the Department provided general information for taxpayers by way of a question-and-answer format containing a few illustrations.

Among the information contained in the Ruling is the following:

- Both the sales and use tax rates are 6 percent, but there is an additional “local use tax rate” for the location where the tangible personal property will be used, stored or consumed.
- Taxpayers age 85 or older are entitled to a 1 percent reduction in the state use tax rate for items purchased for one’s own personal use. The reduction does not apply to local taxes.
- An out-of-state retailer must obtain a retail license and remit either the South Carolina sales tax or use tax on retail sales shipped into South Carolina if it has a physical presence, like a warehouse, store, agent or employee, inside the state.
- Individuals are liable for paying the sales and use tax even if the seller, like a mail order catalogue or an internet site, does not collect it.
- There is a three-year statute of limitations on assessment of the use tax, but if there is evidence of a fraudulent attempt to evade it, the Department will have additional time, typically twelve to 72 months

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after the date on which it learns of the arrangement.

The Ruling also provides filing and remittance guidance.

The second advisory opinion, [Private Letter Ruling # 16-1](#), concluded that a website's shopping membership fee is subject to South Carolina's sales and use tax, but its free one-month trial memberships are not.

The inquiry came from a limited liability company referred to as ABC, LLC.

The annual membership fee entitles members to enjoy free and discounted shipping, the ability to download and stream digital content, and other benefits, like these:

1. A line of premium, everyday essential products, currently limited to baby wipes, that only members may purchase;
2. Discounted pricing on items like televisions and software;
3. A discounted shipping fee of \$5.99 for heavy and bulk items that weigh up to 45 pounds;
4. Free two-day shipping on certain purchases so designated on the website;
5. Unlimited streaming of movies and television shows for no additional cost;
6. Unlimited, ad-free access to more than a million songs and albums;
7. Free access to electronic books, up to one per month; and
8. 30 minutes of early access to select deals and events.

The Department ruled that the membership fee is taxable because:

1. ABC is in the business of selling tangible personal property at retail;
2. The site gives users the right to use a "communication service," the streaming content, which is considered to be tangible personal property; and
3. The membership fee entitles members to receive tangible personal property subject to South Carolina tax as a benefit of membership, even if not all benefits are subject to taxation.

Finally, in its third advisory opinion, [Revenue Ruling # 16-5](#), the Department concluded that charges paid by a customer for streaming television programs, movies, music, and other similar content are charges for communication services, and are therefore subject to South Carolina sales and use tax, whether paid for as part of a subscription service, per item, or per event.

The Ruling recognized that by statute, the state's sales tax is to be imposed on every person who is in the business of selling tangible personal property at retail, and that the use tax is to be imposed on the storage, use, or other consumption of tangible personal property, regardless of whether the retailer is engaged in business in South Carolina.

The Department also noted that statutory law establishes that certain communications, including cable and satellite transmission of television programs, movies, music, and other similar content, constitute tangible personal property. Because the on-line streaming transmission of television programs, movies and music is no different from that provided for in the statute, the charges for the services constitute taxable communications services.



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