



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC REVENUE RULING #18-5

SUBJECT: Barges - Maximum Sales and Use Tax Provisions
(Sales and Use Tax)

EFFECTIVE DATE: July 1, 2017

SUPERSEDES: SC Revenue Ruling #06-6 and all previous documents and any oral directives in conflict herewith.

REFERENCES: S.C. Code Ann. Section 12-36-2110 (2014; Supp. 2017)
S.C. Code Ann. Section 12-36-2120(21) (2014)
S.C. Code Ann. Section 50-21-10 (Supp. 2017)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

Purpose of Update:

The purpose of this advisory opinion is to update SC Revenue Ruling #06-6 to address the increase in the maximum sales and use tax on boats as part of Act No. 40 of 2017, "The South Carolina Infrastructure and Economic Development Reform Act." The Act increased the maximum sales and use tax on boats from 5% but not more than \$300, to 5% but not more than \$500. The increase became effective on July 1, 2017.

Questions:

1. Is the sale at retail of a barge entitled to a maximum sales and use tax as a "boat" under Code Section 12-36-2110?

2. Is the lease at retail of a barge entitled to a maximum sales and use tax as a “boat” under Code Section 12-36-2110?

Conclusions:

1. It is the Department’s opinion that the sale of a barge is entitled to a maximum sales and use tax under Code Section 12-36-2110 as a “boat.”
2. It is the Department’s opinion that the lease at retail of a barge is entitled to a maximum sales and use tax under Code Section 12-36-2110 as a “boat,” provided (1) the lease is in writing and (2) the lease specifically states a term of, and remains in force for, a period in excess of ninety continuous days.

In addition, the sales or use tax applies to each renewal of the lease, and a maximum sales and use tax for that renewal will only apply if (1) the lease renewal is in writing and (2) the lease renewal specifically states a term of, and remains in force for, a period in excess of ninety continuous days.

Note 1: A barge of “more than fifty tons burden” is exempt from the sales and use tax, and the casual excise tax, under Code Section 12-36-2120(21).

Note 2: A barge that is permanently affixed to (1) a dock, (2) the ocean, lake or river bottom, or (3) any other realty is not used as a “boat” and is not entitled to a maximum sales and use tax under Code Section 12-36-2110 or the exemption under Code Section 12-36-2120(21).

Discussion:

The first issue concerns whether the sale of a barge qualifies for a maximum sales and use tax. Effective July 1, 2017, Code Section 12-36-2110(A) reads, in part:

(A)(1) The maximum tax imposed by this chapter is [five]¹ hundred dollars for each sale made after June 30, 1984, or lease executed after August 31, 1985, of each:

* * *

(d) boat;

* * *

(2) In the case of a lease, the total tax rate required by this section applies on each payment until the total tax paid equals [five] hundred dollars. Nothing in this section prohibits a taxpayer from

¹ Effective after June 30, 2017, the maximum sales and use tax imposed pursuant to this chapter on the sale, lease, or registration of an item enumerated in item (1) is increased from \$300 to \$500. Code Section 12-36-2110(A)(4).

paying the total tax due at the time of execution of the lease, or with any payment under the lease. To qualify for the tax limitation provided by this section, a lease must be in writing and specifically state the term of, and remain in force for, a period in excess of ninety continuous days.

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. See *Hay v. South Carolina Tax Commission*, 273 S.C. 269, 255 S.E.2d 837 (1979); *Fennell v. South Carolina Tax Commission*, 233 S.C. 43, 103 S.E.2d 424 (1958); *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 S.C. 484, 60 S.E.2d 682 (1950).

The Second College Edition of *The American Heritage Dictionary* defines the words “boat” and “barge” as follows:

Boat 1. A relatively small, usually open craft. 2. A ship. ...

Barge 1. A long, large, usually flat-bottomed boat that is unpowered and towed by other craft, used for transporting freight. 2. A large pleasure boat. 3. A powerboat reserved for the use of a flag officer.

Although not controlling, the definitions found in Code Section 50-21-10 provide further insight into whether a barge should be considered a boat. Code Sections 50-21-10(2) and (25), respectively, define a “boat” as “a vessel,” and define a “vessel” as “every description of watercraft, other than a seaplane regulated by the federal government, used or capable of being used as a means of transportation on water.”

Based on the above, the sale at retail of a barge is entitled to a maximum sales and use tax under Code Section 12-36-2110 as a “boat.”

The second issue concerns the application of a maximum sales and use tax to the lease of a barge.

Code Section 12-36-100 defines the term “sale” to include “a rental, lease, or other form of agreement.” In addition, as stated above, the maximum sales and use tax provisions of Code Section 12-36-2110(A), which includes boats, state in part:

(2) In the case of a lease, the total tax rate required by this section applies on each payment until the total tax paid equals [five] hundred dollars. Nothing in this section prohibits a taxpayer from paying the total tax due at the time of execution of the lease, or with any payment under the lease. To qualify for the tax limitation provided by this section, a lease must be in writing and specifically state the term of, and remain in force for, a period in excess of ninety continuous days.

Therefore, the lease at retail of a barge is entitled to a maximum sales and use tax under Code Section 12-36-2110 as a “boat,” provided (1) the lease is in writing and (2) the lease specifically states a term of, and remains in force for, a period in excess of ninety continuous days.

The sales or use tax applies to each renewal of the lease, and a maximum sales and use tax for that renewal will only apply if (1) the lease renewal is in writing and (2) the lease renewal specifically states a term of, and remains in force for, a period in excess of ninety continuous days.

In addition, based on the above discussion, a barge is also considered a boat under the casual excise tax provisions found in Code Sections 12-36-1710 through 12-36-1740.

Note 1: A barge of “more than fifty tons burden” is exempt from the sales and use tax, and the casual excise tax, under Code Section 12-36-2120(21).

Note 2: A barge that is permanently affixed to (1) a dock, (2) the ocean, lake or river bottom, or (3) any other realty is not used as a “boat” and is not entitled to the maximum sales and use tax under Code Section 12-36-2110.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell
W. Hartley Powell, Director

May 2 _____, 2018
Columbia, South Carolina