



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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SC REVENUE RULING #19-5

- SUBJECT:** Residential Electricity and Fuel Exemption – Primary Residence, Vacation Homes and Second Homes¹
(Sales and Use Tax)
- EFFECTIVE DATE:** For sales of electricity and fuel made on and after October 1, 2019.
- REFERENCES:** S.C. Code Ann. Section 12-36-2120(33) (2014)
S.C. Regulation 117-323 (2012)
- 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 a 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 It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

INTRODUCTION

South Carolina exempts from the sales and use tax the sale of electricity and other fuels used for “residential purposes.” Electrical power and propane fuel providers in South Carolina have requested guidance on the application of this exemption to various scenarios involving homes that may be rented or used for business purposes.

The purpose of this advisory opinion is to address the application of the exemption to sales of electricity or fuel for use in primary residences, vacation homes and second homes, some of which may be rented during the year, and homes which have been converted to business use.

¹ Primary residences, vacation homes and second homes include condominium units, timeshare units, and single family homes. For information on the taxation of electricity or fuel sold for use in the common areas of apartments and similar residential facilities, see SC Revenue Ruling #92-4.

In determining whether electricity is used for residential purposes, the Department has long accepted the rate classifications (tariff guidelines) used by the power companies in establishing the rate at which electricity will be sold to a customer, provided such classifications are reasonable. This advisory opinion replaces that determination, representing a change in policy effective October 1, 2019, with respect to sales of electricity for use in primary residences, vacation homes, and second homes.²

LAW

Code Section 12-36-2120 provides exemptions from the sales and use tax and reads, in part:

Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

* * * *

(33) electricity, natural gas, fuel oil, kerosene, LP gas, coal, or any other combustible heating material or substance used for residential purposes....

Regulation 117-323 defines the term “residential purposes” and provides as follows:

...the term “residential purposes” ... is construed to mean any space or area occupied by one or more individuals with the intent that such space or area serves as a residence, house, dwelling or abode. Included in the exemption are single family houses, duplexes, condominium units, apartments and mobile homes of a permanent type used by a person or persons as a place of residence, house, dwelling or abode. All sales to such locations would be exempt.

Electricity, natural gas, fuel, oil, coal or any other type of combustible heating materials centrally metered or delivered to a central storage tank (or area) to duplexes, condominium units, apartments or mobile homes of a permanent type, and billed as such, would be considered as used for residential purposes and exempt.

Excluded from the exemption are hotels, motels, dormitories, nursing homes, summer camps, resort lodges and other dwellings of a temporary or transient nature. All sales to such locations would be taxable. (Emphasis added.)

The Attorney General, in an opinion dated August 23, 1979, addressed the meaning of the term residential purposes and concluded the literal meaning of the term should apply. This decision was based in part on the reasoning that:

...the word “residence” in a restrictive covenant is equivalent to “residential” and is used in contradistinction to “business,” and that if a building is used as a place of abode and no

² Sales of electricity or fuel by electrical power and fuel providers for use in primary residences, vacation homes and second homes made prior to October 1, 2019 will be subject to assessment by the Department for sales of electricity or fuel that do not meet either the tariff guidelines used by power companies to establish residential electricity rates or the guidelines established in this advisory opinion.

business carried on, it would be used for “residence purposes” only, whether occupied by one family or a number of families. Jernigan v. Capps, 187 Va. 73, 45 S.E.2d 886. Also, the terms “residence purposes” and “residences” require use of the property for living purposes as distinguished from uses for business or commercial purposes. MacDonald v. Painter, Texas, 441 S.W. 2d 179.

QUESTIONS AND ANSWERS

1. Q. Is the sale of electricity or fuel sold for use in a primary residence, vacation home or second home exempt from sales and use tax under Code Section 12-36-2120(33)?
 - A. Since a primary residence, vacation home or second home is occupied by one or more individuals for living purposes with the intent that the property serve as their “residence, house, dwelling or abode,” sales of electricity or fuel to these homes are exempt from sales and use tax under Code Section 12-36-2120(33) and SC Regulation 117-323.

Note: In accordance with the regulation, the exemption does not apply to hotels, motels, dormitories, nursing homes, summer camps and resort lodges, regardless of the duration of stay.
2. Q. Is the sale of electricity or fuel sold for use in a primary residence, vacation home or second home that is rented exempt from sales and use tax under Code Section 12-36-2120(33)?
 - A. Since a primary residence, vacation home or second home that is rented (for any number of days) is occupied by the renter for living purposes with the intent that the property serve as their “residence, house, dwelling or abode” during the rental period, sales of electricity or fuel to these homes are exempt from sales and use tax under Code Section 12-36-2120(33) and SC Regulation 117-323.
3. Q. Is the sale of electricity or fuel sold for use in a primary residence, vacation home or second home that is temporarily vacant (e.g., the property is listed for sale, or the property remains vacant while the owner looks for another renter, etc.) exempt from sales and use tax under Code Section 12-36-2120(33)?
 - A. Yes, until the property is no longer used for residential purposes.
4. Q. Is the sale of electricity sold to a mobile home park to provide lighting for parking areas, as well as security, for the residents of the park exempt from sales and use tax under Code Section 12-36-2120(33)?
 - A. Yes. Since the electricity used for providing lighting for parking areas as well as security for the residents of a mobile home park is integral and necessary to each individual mobile home’s residential use, the sale of electricity for such lights is exempt from sales and use tax under Code Section 12-36-2120(33). This example does not apply to the common areas of residential subdivisions. See SC Revenue Ruling #17-1.

5. Q. Is the sale of electricity or fuel sold for use in a single family type home converted to business use, such as a professional office or restaurant, exempt from sales and use tax under Code Section 12-36-2120(33)?
- A. No. Electricity or fuel sold for use in homes that are used for business purposes, as opposed to living purposes, is not exempt from sales and use tax under Code Section 12-36-2120(33) and SC Regulation 117-323.
6. Q. Is the sale of electricity or fuel sold to a construction contractor for use during the construction and sale of a home (primary residence, vacation home or second home) exempt from sales and use tax under Code Section 12-36-2120(33)?
- A. No. Since the home is under construction or is being marketed for sale by a person in the business of building and selling the home (i.e., the construction contractor), the sale of electricity or fuel for use in constructing and selling the home is not exempt from the sales and use tax under Code Section 12-36-2120(33). The electricity or fuel used in the home is subject to the sales tax until it is sold to someone who will use it for residential purposes.

ADDITIONAL GUIDANCE

For additional guidance on the application of the residential electricity exemption to other transactions, see the following advisory opinions:

1. SC Revenue Ruling #17-4 – Residential Electricity Exemption – Nursing Homes, Assisted Living Facilities, Healthcare Facilities, Dormitories, and Prisons.
2. SC Revenue Ruling #17-1 – Residential Electricity Exemption – Vacant Apartment Units, Separately Metered Pools, Storage Sheds, and Other Structures at a Single Family Home, and Common Areas Maintained by a Homeowners’ Association.
3. SC Revenue Ruling #92-4 – Residential Electricity Exemption – Apartment Complexes.
4. SC Technical Advice Memorandum #87-5 – Residential Electricity Exemption – Residential Area Lights.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

July 7 _____, 2019
Columbia, South Carolina