



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214-0575

SC PRIVATE LETTER RULING #20-5

SUBJECT: Sales of Electricity – Vehicle Charging Stations
(Sales Tax)

REFERENCES: S.C. Code Ann. Section 12-36-60 (2014)
S.C. Code Ann. Section 12-36-90 (2014)
S.C. Code Ann. Section 12-36-110 (2014)
S.C. Code Ann. Section 12-36-120 (2014)
S.C. Code Ann. Section 12-36-910 (2014)

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: A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

QUESTIONS

1. Are sales of electricity by utilities to 123 Company for its vehicle charging stations, as described in the facts, subject to South Carolina sales tax?
2. Are sales of electricity by 123 Company to customers at its vehicle charging stations, as described in the facts, subject to South Carolina sales tax?

CONCLUSIONS

1. Sales of electricity by utilities to 123 Company for its vehicle charging stations, as described in the facts, are wholesale sales not subject to South Carolina sales tax.

2. Sales of electricity by 123 Company to its customers at its charging stations, as described in the facts, are retail sales subject to South Carolina sales tax. All charges (i.e., charging fees, session fees, idling fees, etc.) with respect to the retail sale of electricity are includable in gross proceeds of sales and, therefore, subject to South Carolina sales tax.

FACTS

123 Company owns and operates electric vehicle charging stations in South Carolina. Customers of 123 Company pay for electricity based on charging time, a session fee, and an “idling” fee if the vehicle is left connected to a charger for longer than a specified time after the charge is complete. In the future, subject to utility regulatory approval, 123 Company may charge for electricity by kilowatt hour.

LAW AND DISCUSSION

Code Section 12-36-910(A) imposes the sales tax and provides:

A sales tax, equal to [six]¹ percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-60 defines the term “tangible personal property” and states, in part:

“Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles...and sales of electricity.

Therefore, the term tangible personal property includes the sale or use of services and intangibles, including sales of electricity, which are subject to South Carolina sales or use taxes under Chapter 36 of Title 12.

Sales of electricity are subject to sales tax under Chapter 36 of Title 12 pursuant to Code Section 12-36-910(B)(2), which imposes the tax on the “gross proceeds accruing or proceeding from the sale of electricity.”

Code Section 12-36-110 defines the terms “retail sale” and “sale at retail” to mean, in part:

... all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

¹ Code Section 12-36-1110 increased the state sales tax rate to 6% from 5% beginning June 2007.

Code Section 12-36-120 defines the terms “wholesale sale” and “sale at wholesale” to mean, in part, a sale of:

- (1) tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale.

Therefore, wholesale sales are defined, in part, as sales of tangible personal property (including electricity) to licensed retail merchants for resale. Retail sales are defined as all sales of tangible personal property (including electricity) except those defined as wholesale sales.

The basis or measure of the sales tax on retail sales is “gross proceeds of sales.” Gross proceeds of sales means “the value proceeding or accruing from the sale, lease, or rental of tangible personal property” without any deduction for the cost of materials, labor or service, or any other expenses. Code Section 12-36-90(1)(b).

Based on the above, sales of electricity by utilities² to 123 Company for resale to customers at vehicle charging stations are wholesale sales and, therefore, are not subject to South Carolina sales tax.

Sales of electricity by 123 Company to its customers at its charging stations are retail sales subject to South Carolina sales tax. All charges (i.e., charging fees, session fees, idling fees, etc.) with respect to the retail sale of electricity are includable in gross proceeds of sales and, therefore, subject to South Carolina sales tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

July 7 _____, 2020
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

² Persons engaged in the business of selling electricity for resale (wholesale sales), and public utilities and electric cooperatives (not including municipalities) engaged in the business of selling electricity at retail, are liable for the electric power tax unless the electricity has been previously taxed in South Carolina or the sale is otherwise exempt. See Code Sections 12-23-10 and 12-23-20.