



ALAN WILSON
ATTORNEY GENERAL

March 28, 2022

The Honorable Scott F. Talley
291 South Pine Street
Spartanburg, SC 29302

Dear Senator Talley:

In a prior opinion dated September 30, 2021 (*Op. S.C. Atty. Gen.*, 2021 WL 4773141 (Sept. 30, 2021)), this Office determined that the South Carolina Department of Motor Vehicles can collect infrastructure maintenance fees from owners and lessees of motor vehicles that are titled or registered in South Carolina for use as short-term rentals. You have asked us to reconsider our conclusion.

LAW/ANALYSIS

Section 56-3-627 of the South Carolina Code of Laws provides for payment of an infrastructure maintenance fee ("IMF"):

(A) In order to account for the necessary road maintenance caused by each item traversing the roads of this State, in addition to the registration fees imposed by this chapter, the owner or lessee of each vehicle or other item that is required to be registered pursuant to this chapter must pay an infrastructure maintenance fee upon first titling or registering the vehicle or other item. Also, the owner or lessee of each trailer or semitrailer must pay the fee upon first titling or registering the trailer or semitrailer. The Department of Motor Vehicles may not issue a title or registration until the infrastructure maintenance fee has been collected. The infrastructure maintenance fee must be credited to the Infrastructure Maintenance Trust Fund.

(B) If upon purchasing or leasing the item from a dealer, the owner or lessee first registers the item in this State, then the fee equals five percent, not to exceed five hundred dollars, of the gross proceeds of sales, or sales price, as those terms are defined in Chapter 36, Title 12. If the dealer holds a South Carolina retail

license or offers to license, title, or register the item, then the dealer must collect the fee and remit it to the Department of Motor Vehicles. If the dealer does not license, title, or register the item, the customer must pay the infrastructure maintenance fee to the department when titling or registering the vehicle.

(C)(1) If upon purchasing or leasing the item from a person other than a dealer, the owner or lessee first registers the item in this State, then the fee equals five percent, not to exceed five hundred dollars, of the fair market value of the item. If the lessee purchases the vehicle he originally leased and the registrant of the vehicle remains the same, the person does not owe an additional infrastructure maintenance fee.

(2) Excluded from the fee imposed pursuant to this subsection are:

(a) items transferred:

(i) to members of the immediate family;

(ii) to a legal heir, legatee, or distributee;

(iii) from an individual to a partnership upon formation of a partnership, or from a stockholder to a corporation upon formation of a corporation;

(iv) to a licensed motor vehicle or motorcycle dealer for the purpose of resale;

(v) to a financial institution for the purpose of resale;

(vi) as a result of repossession to any other secured party, for the purpose of resale;

(vii) to an insurer for the purpose of applying for a salvage title;

(b) the fair market value of an item transferred to the seller or secured party in partial payment;

(c) gross proceeds of transfers of items specifically exempted by Section 12-36-2120 from the sales or use tax;

(d) items where a sales or use tax has been paid on the transaction necessitating the transfer . . .

S.C. Code Ann. § 56-3-627 (1976 Code, as amended).

In your request letter, you specifically asked us to consider the exclusion from an IMF for items transferred “to a licensed motor vehicle or motorcycle dealer for the purpose of resale.” S.C. Code Ann. § 56-3-627(C)(2)(a)(iv). The term “resale” is not defined in the statute. However, section 56-3-627 provides that the terms “gross proceeds of sales” and “sales price” are defined by Chapter 36, Title 12, the South Carolina Sales and Use Tax Act (“Act”). See S.C. Code Ann. § 56-3-627(B). This suggests that other terms that are not defined by section 56-3-627 could have the same meaning as the Act.

Section 56-3-627 contains other exclusions regarding sales and use taxes that support this determination. The gross proceeds of sales that were specifically exempted in section 12-36-2120 from sales or use taxes are excluded from an IMF. See S.C. Code Ann. § 56-3-627(C)(2)(c). Additionally, sales in which a sales or use tax has been paid are excluded. See S.C. Code Ann. § 56-3-627(C)(2)(d). As a result of these exclusions, the Act directs the imposition of an IMF on certain transactions.

A review of the Act shows that it does not define the term “resale.” However, its definitions are useful for determining the term’s meaning. Pursuant to the Act, a “sales tax, equal to five 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 . . .” S.C. Code Ann. § 12-36-910(A). The words “sale at retail” and “retail sale” mean “all sales of tangible personal property except those defined as wholesale sales . . .” S.C. Code Ann. § 12-36-110 (emphasis added).

According to the Act, the terms “sale” and “purchase” mean “any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

S.C. Code Ann. § 12-36-100 (emphasis added).

Retail sales do not include wholesale sales. The Act provides that a “wholesale sale” and “sale at wholesale” mean “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” S.C. Code Ann. § 12-36-120 (emphasis added). In Stanton Quilting Co. v. S.C. Tax Comm'n, 281 S.C. 133, 137, 314 S.E.2d 844, 846 (Ct. App. 1984), the court explained, regarding wholesale sales, that “the intent of the legislature was to exempt from sales tax to buyers who purchase for resale, not as consumers or for use themselves.” The court noted that “[a] ‘dealer’ in the popular, and therefore in the statutory, sense of the word, is not one who buys to keep, or makes to sell, but one who buys to sell again.” Id. at 135, 845 (quoting Aldridge Motors v. Alexander, 217 N.C. 750, 9 S.E.2d 469, 472 (1940)).

Sales tax is imposed on retail sales to users or consumers. The term “sale,” as used in reference to sales or use taxes, specifically includes a rental. See S.C. Code Ann. § 12-36-100. Sales tax is therefore imposed on short-term rentals of motor vehicles to customers. See South Carolina Department of Revenue, SC Revenue Ruling #18-1 (July 1, 2017) (short-term rentals (e.g., daily weekly) of motor vehicles are subject to the sales tax).

In contrast, sales tax is not paid on wholesale sales, which include sales to dealers for resale. The court in Stanton Quilting Co. defined a “dealer” as “one who buys to sell again,” which indicates that the term “resale” means “to sell again.” As previously discussed, the term “sale,” as used in reference to sales or use taxes, includes a short-term rental of a motor vehicle. We therefore believe that a dealer’s purchase of motor vehicles for subsequent daily rental to customers would constitute a “resale.”

Section 56-3-627 provides for an exclusion from an IMF for items transferred to a licensed motor vehicle dealer for the purpose of resale. Based on our examination of the Act, we believe that the exclusion applies to a dealer’s purchase of motor vehicles for subsequent daily rental and an IMF cannot be collected. The provision in section 56-3-627 that the term “gross proceeds of sales” be defined by the Act supports this conclusion, because the Act states that “[g]ross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property” S.C. Code Ann. § 12-36-90 (emphasis added). This shows that the Legislature recognized and intended for the word “resale,” i.e., a subsequent sale, in the exclusion to include a rental.

CONCLUSION

It is our opinion that the exclusion from an infrastructure maintenance fee in S.C. Code Ann. § 56-3-627(C)(2)(a)(iv) for items transferred “to a licensed motor vehicle or motorcycle dealer for the purpose of resale” applies to a dealer’s purchase of motor vehicles for subsequent daily rental to customers. Therefore, the South Carolina Department of Motor Vehicles cannot collect infrastructure maintenance fees from owners and lessees of motor vehicles that are titled or registered in South Carolina for use as short-term rentals. We hereby amend our opinion dated

The Honorable Scott F. Talley
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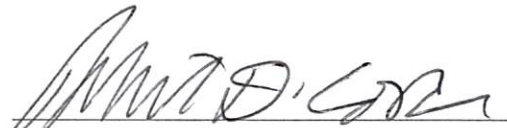
September 30, 2021 Op. S.C. Atty. Gen., 2021 WL 4773141 (Sept. 30, 2021), to this effect. However, the Legislature may wish to clarify this issue.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

cc: Kevin A. Shwedo