

SC REVENUE RULING 04-12

SUBJECT: Vacation Homes, Second Homes and Places of Abode
(Sales Tax on Accommodations)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-920 (Supp. 2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Section 1-23-10(4) (Supp. 2003)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Ruling does not have the force or effect of law, and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Question:

If a person owns a home with less than six sleeping rooms and rents the home or individual rooms in the home to others, are the rental charges under any of the following circumstances subject to the sales tax on accommodations under Code Section 12-36-920?

1. The owner uses the home only for one or two weeks a year for family vacations and rents it to others during the rest of the year on a weekly basis. The person renting the home from the owner may rent it for more than one week, but in no case does any one person rent it for more than three consecutive weeks.
2. The owner lives in the home for six months during the winter months and rents it to others during the rest of the year on a weekly basis. The person renting the home from the owner may rent it for more than one week, but in no case does any one person rent it for more than three consecutive weeks.
3. The owner lives in the home for six months during the summer months and rents it to another person for the remaining six months during the winter months.

4. The owner lives in the home throughout the year, but operates the home as a “bed and breakfast” whereby the remaining rooms are rented to others on a daily or weekly basis and the owner serves as an innkeeper providing the necessary amenities and services for each guest. The person renting a room at the home from the owner may rent it for more than one week, but in no case does any one person rent a room for more than two consecutive weeks.

In all the above circumstances, the owner rents the home or the individual rooms in the home on his own and does not employ the services of a real estate agent, broker or some other similar person to rent the home or the rooms.

Conclusion:

If a person owns a home with less than six sleeping rooms and rents the home to others, the rental charges under the following circumstances are subject to the sales tax on accommodations under Code Section 12-36-920:

1. The owner uses the home only for one or two weeks a year for family vacations and rents it to others during the rest of the year on a weekly basis. The person renting the home from the owner may rent it for more than one week, but in no case does any one person rent it for more than three consecutive weeks.
2. The owner lives in the home for six months during the winter months and rents it to others during the rest of the year on a weekly basis. The person renting the home from the owner may rent it for more than one week, but in no case does any one person rent it for more than three consecutive weeks.

If a person owns a home with less than six sleeping rooms and rents the home to others, the rental charges under the following circumstances are not subject to the sales tax on accommodations under Code Section 12-36-920:

1. The owner lives in the home for six months during the summer months and rents it to another person for the remaining six months during the winter months. The rental is not subject to the sales tax on accommodations since the home is rented to the same person for ninety or more continuous days.
2. The owner lives in the home throughout the year, but operates the home as a “bed and breakfast” whereby the remaining rooms are rented to others on a daily or weekly basis and the owner serves as an innkeeper providing the necessary amenities and services for each guest. The person renting a room at the home from the owner may rent it for more than one week, but in no case does any one person rent a room for more than two consecutive weeks. The rentals are not subject to the sales tax on accommodations since the home serves as the owner’s “place of abode” during the same times at which the remaining rooms are rented to others as part of a “bed and breakfast” facility.

In all the above circumstances, the owner rents the home or the individual rooms in the home on his own and does not employ the services of a real estate agent, broker or some other similar person to rent the home or the rooms.

Discussion:

Code Section 12-36-920 imposes the sale tax on accommodations, and reads:

(A) A sales tax equal to seven percent is imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration. This tax does not apply where the facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the individuals place of abode. The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of ninety continuous days are not considered proceeds from transients. The tax imposed by this subsection (A) does not apply to additional guest charges as defined in subsection (B).

(B) A sales tax of five percent is imposed on additional guest charges at any place where rooms, lodgings, or accommodations are furnished to transients for a consideration, unless otherwise taxed under this chapter. The term additional guest charges includes, but is not limited to:

- (1) room service;
- (2) amenities;
- (3) entertainment;
- (4) special items in promotional tourist packages;
- (5) laundering and dry cleaning services;
- (6) in-room movies;
- (7) telephone charges;
- (8) rentals of meeting rooms; and
- (9) other guest services.

(C) Real estate agents, brokers, corporations, or listing services required to remit taxes under this section shall notify the department if rental property, previously listed by them, is dropped from their listings.

(D) When any business is subject to the sales tax on accommodations and the business has more than one place of business in the State, the licensee shall report separately in his sales tax return the total gross proceeds derived from business done within and without the corporate limits of municipalities. A taxpayer who owns or manages rental units in more than one county or municipality shall report separately in his sales tax return the total gross proceeds from business done in each county or municipality.

(E) The taxes imposed by this section are imposed on every person engaged or continuing within this State in the business of furnishing accommodations to transients for consideration.

Code Section 12-36-70(1)(b) defines the terms “retailer” and “seller” to include every person “furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individuals [sic] place of abode.”

Code Section 12-36-510 establishes who, as a retailer or seller, must obtain a retail license before engaging in business. However, subsection (B)(3) of this section states that a retail license is not required of:

persons furnishing accommodations to transients for one week or less in any calendar quarter; however, accommodations taxes must be remitted annually, on forms prescribed by the department, by April 15 of the following year. This item (3) of this subsection does not apply to rental agencies or persons having more than one rental unit

SC Regulation 117-307.3 concerns certain facilities that are not subject to the sales tax on charges for accommodations, and states:

The tax also applies to the gross proceeds from the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration, except where such facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities. The gross proceeds derived from the lease or rental of accommodations supplied to the same person for a period of 90 continuous days shall not be considered proceeds from transients.

SC Regulation 117-307.4 concerns rentals of ninety or more continuous days, and states:

A business, usually an airline, bus company or railroad, will reserve a certain number of rooms in a hotel for use by its personnel. Usually the hotel is guaranteed a certain minimum occupancy. The hotel is paid for the number of rooms that are occupied and would not necessarily furnish the same rooms each time. Such proceeds derived from the rentals of the accommodations supplied would be subject to the sales tax.

A business rents from a hotel certain specific rooms on a continuing basis. These rooms are occupied by authorized personnel of the corporation, on a daily basis. The hotel is paid for the specific number of rooms that are rented, whether they are used or not.

Transactions of this nature would not be subject to the tax if the contract remains in force for a time in excess of 90 continuous days.

Based on the above, the furnishing of accommodations for a consideration is subject to the sales tax on accommodations. However, the sales tax on accommodations does not apply if:

1. the same room is provided to the same person (individual or business) for a period of ninety or more continuous days; or

2. the facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities.

While the regulation cited above provides guidance with respect to accommodations for ninety or more continuous days, neither the statute nor the regulations define the term “place of abode.”

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission, 273 SC 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 SC 484, 60 S.E.2d 682 (1950).

The Second College Edition of the American Heritage Dictionary defines the word “abode” to mean “a dwelling place or home.” Black’s Law Dictionary, Seventh Edition, defines the word “abode” to mean “a home; a fixed place of residence.”

In addition, it has been the longstanding policy of the Department that in order for the exception for a “place of abode” to apply, the facility must serve as the owner or operator’s home or residence, including periods during which one or more of the remaining sleeping rooms at the facility are rented to others. This is supported in a case decided by the Administrative Law Judge Division - Anonymous Taxpayer v. South Carolina Department of Revenue, 00-ALJ-17-0569-CC(1). In that case, the taxpayers were citizens and residents of Canada who owned a two bedroom villa in Hilton Head, South Carolina. The court noted in the “Finding of Fact” (Item 3) that [i]n 1996, the [Taxpayers] began living in their South Carolina home for six months each year and no longer rented the property during the winter months. [The Taxpayers] have no rental agent, office, or employees in South Carolina.” The taxpayers rented the villa for the summer months by advertising on the Internet.

While the taxpayers raised several arguments before the court, they did not raise the argument that the villa was their “place of abode.” However, the court in its “Conclusions of Law and Discussion” concluded, as a matter of law, that under Code Section 12-36-920:

* * * *

2. Taxpayers renting accommodations in South Carolina have a duty to collect and remit accommodations tax on proceeds from such rentals pursuant to S.C. Code Ann. § 12-36-920 (2000). That statute provides in pertinent part:

(A) A sales tax equal to seven percent is imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration. This tax does not apply where the facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the individual's place of abode. The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of ninety continuous days are not considered proceeds from transients. . . .

* * *

(E) The taxes imposed by this section are imposed on every person engaged or continuing within this State in the business of furnishing accommodations to transients for consideration.

Pursuant to this statute, a tax of seven percent is due on the rental of lodging in a residence to transients for periods of less than ninety days, where the residence in question is not the taxpayer's place of abode. Furthermore, the statute imposes the tax upon the person engaged in furnishing the accommodations to transients. Since the Hilton Head property is not the Petitioners' place of abode and since the rentals in question were all for less than ninety days, the Department argues that the accommodations tax is due on all rentals of the Petitioners' property during the audit period.

Upon reviewing the various arguments and issues raised by the taxpayers, the court upheld the imposition of the sales tax on accommodations.

Based on the above, it is the opinion of the Department that if a person owns a home with less than six sleeping rooms and rents the home to others, the rental charges under the following circumstances are subject to the sales tax on accommodations under Code Section 12-36-920:

1. The owner uses the home only for one or two weeks a year for family vacations and rents it to others during the rest of the year on a weekly basis. The person renting the home from the owner may rent it for more than one week, but in no case does any one person rent it for more than three consecutive weeks.
2. The owner lives in the home for six months during the winter months and rents it to others during the rest of the year on a weekly basis. The person renting the home from the owner may rent it for more than one week, but in no case does any one person rent it for more than three consecutive weeks.

If a person owns a home with less than six sleeping rooms and rents the home or individual rooms in the home to others, the rental charges under the following circumstances are not subject to the sales tax on accommodations under Code Section 12-36-920:

1. The owner lives in the home for six months during the summer months and rents it to another person for the remaining six months during the winter months. The rental is not subject to the sales tax on accommodations since the home is rented to the same person for ninety or more continuous days.
2. The owner lives in the home throughout the year, but operates the home as a “bed and breakfast” whereby the remaining rooms are rented to others on a daily or weekly basis and the owner serves as an innkeeper providing the necessary amenities and services for each guest. The person renting a room at the home from the owner may rent it for more than one week, but in no case does any one person rent a room for more than two consecutive weeks. The rentals are not subject to the sales tax on accommodations since the home serves as the owner’s “place of abode” during the same times at which the remaining rooms are rented to others as part of a “bed and breakfast” facility.

Note: For additional information concerning the sales tax on accommodations, the sales tax on “additional guest charges,” or the application of the sales or use tax to purchases of beds, linens, supplies and other items by an accommodations facility, see SC Regulation 117-307.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank III, Director

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Columbia, South Carolina