

SC PRIVATE LETTER RULING #10-1

SUBJECT: Housekeeping and Similar Service Charges to Property Owner
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-920 (2000, Supp. 2008)
S. C. Code Ann. Section 12-36-1110 (Supp. 2008)
SC Regulation 117-307 (Supp. 2008)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2008)
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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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.

Question:

Are charges for housekeeping and similar services by ABC Resort and Spa to Mr. X and Mrs. X, co-owners with a real property ownership interest in a villa¹ at the resort for specific weeks during the year, subject to the sales tax as "additional guest charges?"

Conclusion:

Charges for housekeeping and similar services by ABC Resort and Spa to Mr. X and Mrs. X, co-owners with a real property ownership interest in a villa at the resort for specific weeks during the year, are not subject to the sales tax as "additional guest charges" during the specific weeks allocated to them by virtue of their real property ownership interest in the villa.

¹ See the "Facts for more details concerning the real property ownership interest of Mr. X and Mrs. X in a villa at the ABC Resort and Spa.

Housekeeping fees and similar fees charged to a person with a real property ownership interest in a villa at the resort for specific weeks during the year are not additional guest charges. In order to be taxable, the charge must be in addition to a room rental charge imposed upon a transient. These charges are not in addition to another charge since these persons have a real property ownership interest in a villa at the resort for these specific weeks during the year. As real property owners of the villa (not transients), they are not charged to use their own villa, but only charged for specific services and their share of expenses.

However, while the housekeeping charge described in the facts is not otherwise subject to the sales and use tax,² other charges imposed on the owners of the villa may be otherwise subject to the sales and use tax. If a charge is otherwise taxed under the sales and use tax law, the charge is subject to the sales tax even if charged to the owner of the villa. For example, sales or rentals of tangible personal property at retail (e.g., sales of meals or the rental of bed linens, towels, and other items), charges for communications services (fax transmission services, cable television service, etc.³) and drycleaning and laundering services,⁴ are subject to the sales and use tax.⁵

Note: If the villa is not occupied by the owner of that villa and is being rented by the owner or some other third party to a transient who does not have a real property ownership interest in the villa for that time period, charges for the rental and charges for mandatory housekeeping and similar services with respect to the rental of the villa are subject to the 7% sales tax on accommodations and charges for optional housekeeping and similar services with respect to the rental of the villa are subject to the 6% sales tax as an “additional guest charge” unless otherwise exempt under the law (e.g., charges to the federal government).

For additional information on the application of the sales tax to “additional guest charges” and when a charge for a service is taxed at 7% as part of the accommodations and when it is taxed at 6% as an “additional guest charge,” see SC Regulation 117-307.1. For information on local sales and use taxes administered and collected by the Department of Revenue on behalf of local jurisdictions, visit the Department’s website at www.sctax.org.

² Based on the facts presented by the taxpayer, the “true object” of the charge for housekeeping is the housekeeping service. Since there is not a separately stated charge to the owners for the linens and towels, the charge is not for the rental of the linens and towels that are owned by the third party housekeeping company. It is a charge by the resort for housekeeping services and the linens and towels are not being rented to the owners, but are being used and consumed in providing the housekeeping service.

³ For additional examples of communications services subject to the sales and use tax, see SC Regulation 117-329.

⁴ For example, charges to dryclean or launder clothing of the owner would be subject to the sales and use tax. For additional examples of drycleaning and laundering services subject to the sales and use tax, see SC Regulation 117-303.

⁵ See also Code Sections 12-36-910(B), 12-36-1310(B) and 12-36-2645.

Facts:

Mr. X and Mrs. X (“owners”) have a real property ownership interest in the XYZ Property Regime at the ABC Resort and Spa at the XYZ Resort (“resort”).

The XYZ Property Regime is not owned by the resort. However, the resort has been contracted by the Board of Directors of the XYZ Property Regime to act as property managers for the villa units.

The owners own one-fifth of a specific villa in the XYZ Property Regime in fee simple absolute as tenants in common with others who own the remaining four-fifths of that villa in fee simple absolute as tenants in common. For purposes of this document, any reference to a real property ownership interest means the ownership of one-fifth of a specific villa in the XYZ Property Regime in fee simple absolute as tenants in common.

When the owners stay at the villa during the specific weeks allocated to them by virtue of their real property ownership interest, they are not charged a “rental” fee. However, they are charged for housekeeping and similar services. Housekeeping includes:

- (1) changing of bed linens,
- (2) replacement of towels,
- (3) cleaning of bathrooms, kitchen surfaces and all appliances,
- (4) vacuuming, and
- (5) all other services needed to provide the next owners a clean villa.

The resort sub-contracts all housekeeping services provided to the villas to a third party housekeeping company. The third party housekeeping company bills the resort for the cleaning services and the resort in turn bills the owner or rental guest for the housekeeping services. The owners of the villas and the resort do not own the bed linens and towels provided in the villas. The bed linens and towels are owned by the third party housekeeping company.

The housekeeping fee charged the owners by the resort is the same as the housekeeping fee charged by the resort to rental guests who stay at the villas. The housekeeping fee is a single charge that is based on the size of the villa and there are no other options as to the level of the housekeeping services that are provided.

The owners are also charged certain administrative fees by the resort for other services, such as the concierge service.

The owners are also responsible for their share of various operating expenses of the building, such as property taxes, insurance, utilities, maintenance and repair, cost of furnishings, etc. The owners must also pay other charges associated with the resort's amenities for golf, tennis, transportation and the use of other facilities⁶ as well as "special assessments" that might be required from time to time to repair the buildings.

Discussion:

Code Section 12-36-920 imposes the sales tax on accommodations and states:

(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. The tax imposed by this subsection (A) does not apply to additional guest charges as defined in subsection (B).

(B) A sales tax of [six]⁷ 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;

⁶ Note: Charges to enter into or use a place of amusement are subject to the State admissions tax pursuant to Code Section 12-21-2420. For additional information as to examples of places of amusement subject to the admissions tax and as to an example of the application of the admissions tax to a homeowners' association membership assessment, see SC Revenue Ruling #05-14 and SC Private Letter Ruling #09-2.

Note, as a private letter ruling, SC Private Letter Ruling #09-2 is binding on agency personnel only with respect to the person to whom it was issued and only with respect to the specific facts set forth in it. However, it is merely noted here as an example for admissions tax purposes.

⁷ Code Section 12-36-1110, which increased the state sales and use tax rate from 5% to 6% on June 1, 2007, states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons. (Emphasis added.)

- (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.

SC Regulation 117-307 states in part:

Code Section 12-36-920 imposes a sales tax upon accommodations and "additional guest charges." The term "additional guest charge" means an amount which is added to the guest's room charge for a specific amenity or service for the guest.

Therefore, charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for other services provided at the hotel, when over and above the services customarily provided with the room, are taxed at 6% as an "additional guest charge." However, if an "additional guest charge" would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an "additional guest charge."

It should therefore be noted that the determination as to what services, if any, are over and above the services customarily provided with the room must be based on all of the facts and circumstances.

The burden of proof that a charge is an additional guest charge, and not part of the price for the room, rests with the taxpayer. Failure to prove that a particular charge is for a service that is over and above the services customarily provided with the room will subject the charge to the 7% tax rate.

Furthermore, in Commission Decision #95-27 it was held that "the term 'additional guest charge' means an amount which is added to the guest's room charge for a specific amenity or service for the guest."

Therefore, charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for other services provided at hotels, motels and other lodging facilities, when over and above the services customarily provided with the room, are taxed at 6% as an "additional guest charge." However, if an "additional guest charge" would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an "additional guest charge."

In addition, SC Regulation 117-307.1, Questions #23 through #26, concerns analogous situations and provides guidance to the issue at hand. It states in part:

23.Q. If a person is not a guest at a hotel, but is attending an event at the hotel, is a \$15.00 charge for valet parking subject to the tax as an additional guest charge?

A. The \$15.00 charge for valet parking is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge. This charge is not in addition to another charge.

Meeting Rooms

24.Q. If a hotel charges \$80.00 for a guest room, and there is no additional charge to the customer for the use of a meeting room, what tax rate applies to the charge?

A. The \$80.00 guest room charge is taxed at 7%.

25.Q. If a hotel charges \$80.00 for a guest room, and the customer is also charged \$35.00 for the use of a meeting room, what tax rate applies to each of the charges?

A. The \$80.00 guest room charge is taxed at 7%, while the \$35.00 charge for the meeting room, as an additional guest charge, is taxed at 6%.

26.Q. Is a \$35.00 charge for the use of the meeting room by a person who is not a guest at the hotel, subject to the tax as an additional guest charge?

A. The \$35.00 charge for the meeting room is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge.

This charge is not in addition to another charge.

Note: If the meeting room is being rented by an organization that is conducting a seminar, workshop, conference, or similar meeting at the hotel, the charge for the meeting room is taxed at 6% as an additional guest charge if the organization is also renting guest rooms at the hotel for officers or members of the organization, invited speakers, or others.

Based on the above, it is the opinion of the Department that charges for housekeeping and similar services by ABC Resort and Spa to Mr. X and Mrs. X, co-owners with a real property ownership interest in a villa at the resort for specific weeks during the year, are not subject to the sales tax as “additional guest charges” during the specific weeks allocated to them by virtue of their real property ownership interest in the villa.

Housekeeping fees and similar fees charged to a person with a real property ownership interest in a villa at the resort for specific weeks during the year are not additional guest charges. In order to be taxable, the charge must be in addition to a room rental charge imposed upon a transient. These charges are not in addition to another charge since these persons have a real property ownership interest in a villa at the resort for these specific weeks during the year. As real property owners of the villa (not transients), they are not charged to use their own villa, but only charged for specific services and their share of expenses.

However, while the housekeeping charge described in the facts is not otherwise subject to the sales and use tax,⁸ other charges imposed on the owners of the villa may be otherwise subject to the sales and use tax. If a charge is otherwise taxed under the sales and use tax law, the charge is subject to the sales tax even if charged to the owner of the villa. For example, sales or rentals of tangible personal property at retail (e.g., sales of meals or the rental of bed linens, towels, and other items), charges for communications services (fax

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transmission services, cable television service, etc.⁹) and drycleaning and laundering services,¹⁰ are subject to the sales and use tax.¹¹

Note: If the villa is not occupied by the owner of that villa and is being rented by the owner or some other third party to a transient who does not have a real property ownership interest in the villa for that time period, charges for the rental and charges for mandatory housekeeping and similar services with respect to the rental of the villa are subject to the 7% sales tax on accommodations and charges for optional housekeeping and similar services with respect to the rental of the villa are subject to the 6% sales tax as an “additional guest charge” unless otherwise exempt under the law (*e.g.*, charges to the federal government).

For additional information on the application of the sales tax to “additional guest charges” and when a charge for a service is taxed at 7% as part of the accommodations and when it is taxed at 6% as an “additional guest charge,” see SC Regulation 117-307.1. For information on local sales and use taxes administered and collected by the Department of Revenue on behalf of local jurisdictions, visit the Department website at www.sctax.org.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

January 12, 2010
Columbia, South Carolina

⁹ For additional example of communications services subject to the sales and use tax, see SC Regulation 117-329.

¹⁰ For example, charges to dryclean or launder clothing of the owner would be subject to the sales and use tax. For additional examples of drycleaning and laundering services subject to the sales and use tax, see SC Regulation 117-303.

¹¹ See also Code Sections 12-36-910(B), 12-36-1310(B) and 12-36-2645.