



SC REVENUE RULING #89-17

SUBJECT: Hotels: Charges for Telephone Calls and Movies
(Sales and Accommodations Tax)

EFFECTIVE DATE: October 1, 1989

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

REFERENCE: S.C. Code Ann. Section 12-35-1120 (Supp. 1988)
S.C. Code Ann. Section 12-35-710 (Supp. 1988)
S.C. Code Ann. Section 12-35-1150 (1976)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Questions:

1. Are charges, separately billed by a hotel for local telephone calls, subject to the sales and accommodations taxes, pursuant to Code Sections 12-35-1120 and 12-35-710?
2. Are charges, separately billed by a hotel for long distance telephone calls, subject to the sales and accommodations taxes, pursuant to Code Sections 12-35-1120 and 12-35-710?
3. Are charges, separately billed by a hotel for "pay for view" movies, subject to the sales and accommodations taxes, pursuant to Code Sections 12-35-1120 and 12-35-710?
4. Are sales of telephone services to a hotel wholesale sales, thereby excluded from the sales tax, pursuant to Code Section 12-35-170?

Facts:

Hotels generally provide a telephone in each room for the use by their guests. With respect to local calls, some hotels include the cost in the price of the room, without a separate billing; and, some charge separately, on a per call or per day basis. In addition, some hotels permit guests to make long distance calls. The hotel then separately bills the guest for each long distance call.

Hotels also provide guests the opportunity to watch movies in their rooms, on a pay per view basis.

Code Section 12-35-1120 imposes the sales tax upon transient accommodations, and reads:

Notwithstanding any other provision of law, the license and the sales or use tax imposed by this chapter shall apply with respect to the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, 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 in a single building 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 ninety continuous days shall not be considered proceeds from transients. The tax provided for in this section shall be at the rate of [five] percent.

Code Section 12-35-710 imposes the 2% accommodations tax and reads, in part:

(1) In addition to the tax levied in [Sections] 12-35-510, 12-35-810, and 12-35-1120 and Article 11 of Chapter 35 of Title 12, there is levied and imposed an additional sales tax of two percent of the gross proceeds from the rental of transient accommodations, including campgrounds, which are subject to the state sales tax.

Therefore, a seven percent tax (5% sales tax + 2% accommodations tax) is imposed on the "gross proceeds derived from the rental or charges for... accommodations".

Furthermore, telephone companies have been remitting the sales tax on local telephone services provided to hotels, pursuant to Code Section 12-35-1150. That section reads:

Notwithstanding any other provision of law, the gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or of messages, are subject to the license, sales or use tax, as provided by this chapter.

Discussions:

1., 2., & 3.

The first issues to be addressed are whether charges for local calls, long distance calls and "pay for view" movies, billed separately by the hotel, are subject to the sales and accommodations taxes.

Code Section 12-35-1120 imposes the sales tax on transient accommodations, with the measure of the tax being the "gross proceeds derived from the rental or charges for any rooms...or accommodations furnished to transients...for a consideration,..."

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 S.C. 529, 220 S.E. 2d 231; Investors Premium Corp. v. South Carolina Tax Commission, 260 S.C. 13, 193 S.E. 2d 642. Also, where the terms of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning. Mitchell v. Mitchell, 266 S.C. 196, 222 S.E. 2d 217; Green v. Zimmerman, 269 S.C. 535, 238 S.E. 2d 323.

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 SE 2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 103 SE2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 SE2d 682 (1950).

Black's Law Dictionary, Fifth Edition, defines "rent" (Rental: See rent), in part, as "[c]onsideration paid for use or occupation of property" (emphasis added). The term "charges" is defined as "[t]he expenses which have been incurred or disbursements made, in connection with a contract, suit, or business transaction".

In addition, the Court of Appeals of North Carolina in Telerent Leasing Corporation v. High, N.C. ___, 174 S.E. 2d 11 (1970), held that:

When a room is rented to a transient guest, it is common practice that the price of the room varies according to the accommodations furnished. For instance, a room with two double beds will usually rent for a higher rate than will one with a single twin bed. Likewise, it is conceivable that a room with a television set would rent at a slightly higher rate than a room similarly furnished, but without a television. It is clear, however, that there is no separate lease or rental of each furnishing which may appear in the room. The consideration paid is for the lodging or accommodation itself-not for a specific bed, lamp, painting, table, chair or television (emphasis added).

Furthermore, the Ohio Board of Tax Appeals in Red Roof Inns v. Limbach, No. 84.84-C-1141, August 28, 1987, held, with respect to a \$.35 daily charge for use by the guest of the room phone, that:

We expressly find that the phone charge is a component of the price paid for the room. The phone charge is an overhead cost akin to the cost of gas, electricity and water which are factored into the room charge.

In summary, "phone [and movie charges are components] of the price paid for the room". "Likewise, it is conceivable that a room with [movies or the use of a telephone] would rent at a slightly higher rate than a room similarly furnished, but without [movies or the use of a telephone]".

4. The second issue is whether or not sales of telephone services to a hotel, by a telephone company, are wholesale sales, thereby not subject to tax.

Code Section 12-35-1150 imposes the sales, use and license taxes upon the "gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of messages....."

Code Section 12-35-140 reads, in part: "...the term tangible personal property shall be interchangeable with and apply with equal force and effect to services....and intangibles, including communications as are specifically provided for in this chapter" (emphasis added).

Code Section 12-35-170 defines "wholesale sale" or "sale at wholesale" and reads, in part:

The terms "wholesale sale" and "sale at wholesale" mean a sale of tangible personal property by wholesalers to licensed retailer merchants...for resale, and do not include a sale by wholesalers to users or consumers, not for resale (emphasis added).

Regulation 117.174.101, entitled "Hotels, Lodging Houses, Apartment Houses, Tourist Camps", reads, in part:

Hotels, lodging houses, apartment houses, tourist camps and the like are subject to the sales or use tax, whichever may apply at the time of purchase for use or consumption of beds, bedding, carpets, shades, curtains, linens, uniforms, supplies, fuel for heating and cooking, air conditioning equipment, etc.

Furthermore, the courts have held that a hotel does not lease or rent towels, sheets, or soap to its guests, but use or consume such items in providing accommodations. (See Hotels Statler Company, Inc. v. District of Columbia, 199 F.2d 172 (1952); Atlanta Americana Motor Hotel Corp. v. Undercofler, 222 Ga. 295, 149 S.E.2d 691 (1966)).

In summary, purchases of tangible personal property (communications) by a hotel, in providing accommodations to transients, are not considered to be rented or resold to transients, but are, instead, used by the hotel.

However, Code Section 12-35-550 provides certain exemptions from the sales, use and/or accommodations taxes. Subsection (10) of that section specifically exempts:

The gross proceeds from the toll charges for the transmission of voice or messages between telephone exchanges and telegraph messages, and carrier access charges and customer access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission.

In summary, the gross proceeds derived from long distance calls are exempt from the tax imposed by Code Section 12-35-1140.

Conclusions:

1., 2., & 3.

Charges, separately billed by a hotel, for local and long distance telephone calls and "pay for view" movies are components of the price paid for the accommodations, and, therefore, subject to the sales and accommodations taxes, pursuant to Code Sections 12-35-1120 and 12-35-710.

4. Sales of telephone services to a hotel are not wholesale sales, and therefore, such sales are subject to the sales tax.

However, charges for long distance calls by the telephone company to the hotel are exempt from the tax, pursuant to Code Section 12-35-550(10).

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
July 5, 1989