

117-307 Hotels, Motels, and Similar Facilities

117-307.1. Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities

117-307.2. Purchases by Hotels, Motels and Other Facilities

117-307.3. Certain Facilities Not Subject to the Tax

117-307.4. Rentals in Excess of Ninety Days Not Subject to the Tax - Airlines, Bus Companies, Etc.

117-307.5. Certain Exchanges of Accommodations Exempt from the Tax

117-307.6. Accommodations Furnished to the Federal Government or Federal Government Employees

117-307.7. The Application of Tax to Hurricane Rental Insurance Charges Imposed by Hotels, Motels, and Other Facilities

117-307 Hotels, Motels, and Similar Facilities.

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.

117-307.1. Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities.

The following questions and answers are intended to provide guidance with respect to the provisions of Code Section 12-36-920.

Telephone Charges

1.Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the phone for local calls, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the phone is a part of the services offered and provided with the room for the \$100.00.

2.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the phone for local calls, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$5.00 telephone charge are taxed at 7%. The availability of a phone is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the phone. Therefore, it is not an additional guest charge when the charge is based on a per day rate.

3.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$1.00 per local phone call, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. Each \$1.00 phone charge is taxed at 6%. The availability of a phone is a part of the services offered and provided with a room; however, the use of the phone for a local call is over and above the services customarily provided with the room. Guests expect to pay a charge for each local call made from the room phone. Therefore, the \$1.00 is an additional guest charge when the charge is based on a per call basis.

4.Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$20.00 for various long distance calls made, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the remaining charges for the long distance calls are taxed at 6% as additional guest charges. The Department in Decision #92-11 held that the charges for long distance telephone calls were not otherwise taxed under Chapter 36 and were therefore taxable as additional guest charges.

Maid Service

5.Q. If a hotel charges \$100.00 for a room, and that price includes maid service, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The maid service is a service provided with the room and is, therefore, part of the room charge that is subject to the tax at 7%.

6.Q. If a hotel charges \$80.00 for a room, and the customer also must pay a mandatory \$20.00 charge for maid service, which may or may not be separately stated, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$20.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the room. The fact that it may be separately charged does not make it a charge for a separate service. In this case the maid service is mandatory, and therefore, the actual charge for the room is \$100.00 which is taxed at 7%.

7.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer also must pay a mandatory \$50.00 charge for maid service at the end of the week, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The fact that it may be separately charged does not make it a charge for a separate service. The maid service is mandatory, and therefore the actual charge for the unit is \$850.00, which is taxed at 7%.

8.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer is required to leave the unit in a clean condition, what tax rate applies to each of the charges if the customer has the option to have the rental agency clean the unit at the end of the week for \$50.00?

A. The \$800.00 weekly unit charge is taxed at 7% and the \$50.00 maid service charge is not subject to the sales tax. The \$50.00 optional maid service is provided over and above the services provided with the unit, but it is not an additional guest charge under the statute. The \$50.00 is therefore not subject to the tax.

9.Q. If a rental agency charges \$800.00 per week for a condominium unit, plus a mandatory \$50.00 charge for maid service at the end of the week, and the customer has the option to receive daily maid service for \$20.00 a day, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The maid service is mandatory, and therefore the actual charge for the unit is \$850.00, which is taxed at 7%. The \$20.00 optional maid service is provided over and above the services provided with the unit, but it is not an additional guest charge under the statute. The \$20.00 is therefore not subject to the tax.

In-room Movies

10.Q. If a hotel charges \$100.00 for a room, and that price includes the in-room movies at no extra charge, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The availability of in-room movies is a part of the services offered and provided with the room for the \$100.00.

11.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged a mandatory fee of \$5.00 per day for in-room movies (whether or not the guest watches any movies), what tax rate applies to each of the charges?

A. The \$80.00 room charge and the mandatory \$5.00 in-room movie charge are taxed at 7%. The availability of in-room movies is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest watches the movies. Therefore, it is not an additional guest charge when the charge is based on a per day rate and the guest is charged whether or not the movies are watched.

12.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$7.00 for each in-room movie he watched, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. The \$7.00 movie charge is taxed at 6%. The availability of in-room movies is a part of the services offered and provided with a room; however, the charge for viewing a movie is over and above the customary charge for the room. Guests expect to pay a charge for each movie viewed. Therefore, the \$7.00 is an additional guest charge when the charge is based on a separate charge for watching the movie. The tax on this additional guest charge is the liability of the hotel, regardless of whether or not service is being provided by a third party or the hotel itself.

Meals

13.Q. If a hotel charges \$100.00 for a room, and that price includes a continental breakfast for the guest, what tax rate applies to the \$100.00?

A. The \$100.00 charge is taxed at 7%. Since the continental breakfast is provided with the room, it is not an additional guest charge. (The withdrawal of the food from the hotel's inventory is subject to the sales tax based on its fair market value. See Code Section 12-36-90 and Code Section 12-36-110.)

14.Q. If a hotel charges \$100.00 for a room and also charges the guest a separately stated \$20.00 "club" fee, what tax rate applies to each of the charges? (The "club" fee, for that extra \$20.00, provides the guest access to a buffet meal that is not available to other guests.)

A. The Department, in Commission Decision #92-32, held that the separately stated charge of \$20.00 was not part of the charge for the room but a retail sale of the meal to the guest. Therefore, the charges are taxed as follows: 7% tax applies to the \$100.00 charge for the room, and 6% tax applies to the \$20.00 charge for the meal. The meal is not taxed as an additional guest charge under Code Section 12-36-920(B) since it is otherwise taxed at 6% under Chapter 36 - Code Section 12-36-910 and Code Section 12-36-1110.

Linens

15.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer has the option to rent linens for \$50.00 for the week, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge is taxed at 7%. The rental of the linens is optional and not part of the services provided with the unit for the \$800.00 charge. The \$50.00 rental of the linens is not an additional guest charge since the rental charge for the linens is a sale of tangible personal property and is otherwise taxed at 6% under Chapter 36 - Code Section 12-36-910 and Code Section 12-36-1110.

Golf and Other Tourist Packages

16.Q. If a hotel has a "golf package" for \$100.00 per night, and the customer is entitled to a room at the hotel, one round of golf at a golf course at no extra charge, and a meal at no extra charge, what tax rate applies?

A. Based on the Department's longstanding administrative policy concerning tourist packages, the \$100 charge would be subject to the 7% tax, except any portion forwarded to the golf course for payment of the green fee and any portion forwarded to the restaurant for payment of the meal. However, see the one exception in the "Note" in Example #1.

The following examples best explain this longstanding administrative policy:

Example #1: The hotel receives \$100 from the guest for the golf package. The hotel pays the golf course \$30 for the guest's green fee and pays the restaurant \$5 for the guest's meal.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30, and the restaurant would be liable for 6% sales tax on the sale of the meal. This calculation must be made on a guest-by-guest basis. In other words, the 7% tax due will be determined for each guest by multiplying 7% by the total charge for the package less the portion forwarded to the golf course for payment of the green fee and the portion forwarded to the restaurant for payment of the meal.

Note: If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest will not be required to pay the "green fee portion" of the package, the hotel would be liable for the 7% tax on the amount it received from the guest less the amount paid by the hotel to the restaurant. For example, if the hotel determined that the "green fee portion" of the \$100 package was \$30 and required the guest to only pay \$70 for that day, then the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable the 6% sales tax on the sale of the meal.

If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest must still pay the hotel the full \$100, the hotel would be liable for the 7% tax on the "accommodations portion" of the package. The golf course would not be liable for the 5% admissions tax since the guest did not play golf and the golf course did not receive an admissions fee from the hotel. However, the hotel is not liable for the 6% tax on the other portion of the \$100 paid by the guest since it does not represent an additional guest charge for the service of making the golf arrangements that were not used. This amount, however, must be equal to the green fee that the hotel would have had to pay to the golf course in order for the entire charge not to be subject to the 7% tax. In other words, if the hotel would have been required to pay \$30 had the guest played golf, then the \$30 that would have been, but was not, sent to the golf course is not subject to the sales tax. As such, the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The \$30 that would have been, but was not, sent to the golf course is not subject to either the sales tax or the admissions tax.

Example #2: The hotel receives \$100 from the guest for the golf package. The hotel pays the restaurant \$5 for the guest's meal. The hotel has an agreement with the golf course to pay the golf course \$30 for the guest's green fee. When a guest does play golf, the hotel pays the \$30; however, the hotel will receive money back from the golf course at a later date to help pay for the hotel's advertisements of its golf packages.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The fact that the hotel will receive a portion of the money back in the future does not affect the taxation of the charges. It is merely an expense of the golf course that is paid to the hotel.

Notes: 1. To ensure the 7% tax is not circumvented by sending most of the package charge to the golf course and then later having a large portion of it returned to the hotel as "advertising," the amount paid to the golf course and returned to the hotel to pay for advertising must be reasonable and supported by the books and records of both taxpayers. Otherwise, the Department will assess taxes according to a reasonable breakdown of room charges, green fees, and meal charges.

2. Other tourist packages, such as tennis, honeymoon, and entertainment packages, handled in a similar manner would be taxed in the manner described above for golf packages.

Bike Rentals

17.Q. If a hotel charges \$100.00 per night for a room, and the customer has the option to rent a bike to travel around the resort area for \$10.00 a day, what tax rate applies to each of the charges?

A. The \$100.00 hotel charge is taxed at 7%. The rental of the bike is optional and not part of the services provided with the room for the \$100.00 charge. The \$10.00 is not an additional guest charge. However, the rental charge for the bike is a sale of tangible personal property and is otherwise taxed at 6% under Chapter 36.

18.Q. If a hotel charges \$100.00 per night for a room, and the hotel allows the guest to reserve a bike at no extra charge to travel around the resort, what tax rate applies to the charge?

A. The \$100.00 hotel charge is taxed at 7%. The availability of the bike is a part of the services provided with the room for the \$100.00 charge.

Newspapers

19.Q. If a hotel charges \$80.00 for a room, and the guest receives a newspaper that is delivered to the guest's door in the morning, what tax rate applies to the charge?

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

20.Q. If a hotel charges \$80.00 for a room, and the customer is charged \$2.00 for a newspaper that is delivered at the guest's request, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. The newspaper is not an additional guest charge since it is not one of the services specifically listed in the statute as an "additional guest charge." The newspaper that is provided for \$2.00 is the sale of tangible personal property; however, sales of newspapers are exempt from the sales tax under Code Section 12-36-2120(8).

Note: Room service is generally considered a service provided to a guest that allows the guest to order food or drink that will be bought to the guest's room. As such, newspapers brought to a guest's room do not fall within the customary definition of room service. Therefore, the \$2 charge to the guest for the newspaper is not an additional guest charge.

Valet Parking

21.Q. If a hotel charges \$80.00 for a room, and there is no additional charge to the customer for valet parking, what tax rate applies to the charge?

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

22.Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$15.00 for valet parking, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the \$15.00 charge for the valet parking is not an additional guest charge and is not taxed at 6%.

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.

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.

Room Refreshment Bar or Refrigerator

27.Q. If a hotel charges \$100.00 for a room, and the room contains a refreshment bar so that the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at no extra cost, what tax rate applies to the \$100.00?

A. The \$100.00 room charge is taxed at 7%.

28.Q. If a hotel charges \$80.00 for a room, and the room contains a refreshment bar so that the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at a set price per item, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the charges for each item the guest consumes from the refreshment bar is taxed at a rate of 6% as a sale of tangible personal property under Code Section 12-36-910 and Code Section 12-36-1110. These charges are not additional guest charges since they are "otherwise taxed" under Chapter 36.

Safes

29.Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the safe in the room, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the safe is a part of the services offered and provided with the room for the \$100.00.

30.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the safe in the room, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$5.00 charge for the safe are taxed at 7%. The availability of a safe is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the safe.

31.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 if the guest uses the safe in the room, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. The \$5.00 charge for actually using the safe is not subject to the tax. The availability of a safe is a part of the services offered and provided with the room; however, the use of the safe is over and above the services customarily provided with the room. In this case, guests expect to pay a charge for use of the safe. Therefore, the \$5.00 charge is not a part of the room charge. It is a charge for a service that is not an additional guest charge under the statute, and therefore, not subject to the tax.

Other Charges (Pet Fees, Smoking Fees, Damage Fees. and Late Check-Out Fees)

32.Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$20 for having a pet in the room, what tax rate applies to each of the charges?

A. The \$100.00 charge and the \$20 charge are taxed at 7%. The pet fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for having a pet in the room; therefore, the actual charge for the room is \$120.

Note: Federal Regulation concerning Service Dogs - Under Federal Regulation 28 C.F.R. 36.302(c)(8), a place of accommodation (as defined in Federal Regulation 28 C.F.R. 36.104), such as an inn, hotel or motel, "shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets."

33.Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$20 for a room in which the guest is allowed to smoke cigarettes, cigars and other smoking tobacco, what tax rate applies to each of the charges?

A. The \$100.00 charge and the \$20 charge are taxed at 7%. The smoking room fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for a smoking room; therefore, the actual charge for the room is \$120.

34.Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$35 if a guest smokes cigarettes, cigars and other tobacco in a non-smoking room, what tax rate applies to each of the charges?

A. The \$100.00 charge and the \$35 charge are taxed at 7%. The fee for smoking in a non-smoking room is neither a charge for a service nor an additional guest charge. It is a mandatory charge for smoking in a non-smoking room; therefore, the actual charge for the room is \$135.

35.Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$35 if a guest damages the room, what tax rate applies to each of the charges?

A. The \$100.00 charge and the \$35 charge are taxed at 7%. The damage fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for causing damage to the room; therefore, the actual charge for the room is \$135.

36.Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$15 if a guest checks out late (past the specified time for check-out), what tax rate applies to each of the charges?

A. The \$100.00 charge and the \$15 charge are taxed at 7%. The late check-out is neither a charge for a service nor an additional guest charge. It is a mandatory charge for checking out past the specified time for check-out; therefore, the actual charge for the room is \$115.

Cancellations

37.Q. If a person reserves and pays for sleeping accommodations at a hotel, but does not cancel the reservation or does not cancel the reservation by the prescribed time set by the hotel, is the charge for the accommodations retained by the hotel subject to the tax even though he will not use the sleeping accommodations?

A. While the sleeping accommodations were not used, the person had the right to use such sleeping accommodations. Therefore, the sleeping accommodations were "furnished" and the charge by the hotel for such sleeping accommodations is subject to the tax. See Question #38 for information concerning when accommodations are canceled but an administrative fee or deposit is charged or retained.

38.Q. If a person makes reservations with a hotel for sleeping accommodations, but the reservations are canceled by such person or by the hotel, is an administrative fee or deposit charged or retained by the hotel as a result of the cancellation subject to the tax?

A. An administrative fee or deposit retained or charged by a hotel when reservations for sleeping accommodations are canceled is not subject to the sales tax.

Note: See Question #37 for information concerning when accommodations are canceled or otherwise not used but a charge for the sleeping accommodations is made or retained by the hotel. See also Question #16, Example #1, Note, for the taxation of a tourist package when sleeping accommodations are furnished but the guest does not use a portion of the package (i.e. the guest pays for a golf package but does not play golf).

Note: This regulation references tax rates of 7% for the sales tax on accommodations, 6% for the sales tax on additional guest charges, and 6% for the sales tax on sales or rentals of tangible personal property. However, some counties and municipalities impose several types of local option sales and use taxes as well as other local taxes imposed upon the furnishing of accommodations and the sale of prepared meals. Some of these taxes are collected by the Department of Revenue on behalf of the county imposing the tax, and others are collected by the county itself.

117-307.2. Purchases by Hotels, Motels and Other Facilities.

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.

117-307.3. Certain Facilities Not Subject to the Tax.

(A) The tax 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. For this exception to apply, the facility must serve as the owner's or operator's "place of abode" during the same times at which the remaining sleeping rooms are rented to transients and the rooms must not be rented to transients by a person other than the owner or operator using the facility as his or her "place of abode." See subsection C below.

Examples illustrate some of the situations as to when the exception applies or does not apply to an individual renting sleeping accommodation at a home with less than six sleeping rooms to a transient for less than 90 continuous days (See subsection B below).

(1) W owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a “bed and breakfast” by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. W rents these rooms to vacationers himself and does not employ the services of a real estate agent or broker.

The rentals by W of these rooms to vacationers qualify for the exception in the statute; therefore, the rental charges paid to W by the vacationers are not subject to the sales tax on accommodations under Code Section 12-36-920.

(2) X owns a home with less than six sleeping rooms and uses the home only for one or two weeks a year for family vacations. She rents the home to vacationers during the rest of the year on a weekly basis. She rents it herself and does not employ the services of a real estate agent or broker.

The rentals by X of the home to vacationers do not qualify for the exception in the statute; therefore, the rental charges paid to X by the vacationers are subject to the sales tax on accommodations under Code Section 12-36-920.

(3) Y owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a “bed and breakfast” by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. However, Y never rents these rooms to vacationers himself. He employs the services of a real estate agent who rents the remaining sleeping rooms for him.

The rentals by the real estate agent of these rooms to vacationers for Y do not qualify for the exception in the statute; therefore, the rental charges paid to the real estate agent by the vacationers are subject to the sales tax on accommodations under Code Section 12-36-920 with the real estate agent liable for the tax.

(4) Z owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a “bed and breakfast” by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. He employs the services of a real estate agent who rents the remaining sleeping rooms for him. However, sometimes Z rents these remaining rooms to vacationers himself.

The rentals by the real estate agent of these rooms to vacationers for Z do not qualify for the exception in the statute; therefore, the rental charges paid to the real estate agent by the vacationers are subject to the sales tax on accommodations under Code Section 12-36-920 with the real estate agent liable for the tax.

The occasional rentals by Z of these rooms to vacationers qualify for the exception in the statute; therefore, the rental charges paid to Z by the vacationers are not subject to the sales tax on accommodations under Code Section 12-36-920.

(B) 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 transient.

(C) Real estate agents, brokers, corporations or listing services leasing or renting accommodations, whether owned by them or others, to persons for periods of less than 90 continuous days are retailers liable for the sales tax on accommodations.

117-307.4. Rentals in Excess of Ninety Days Not Subject to the Tax - Airlines, Bus Companies, Etc.

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.

117-307.5. Certain Exchanges of Accommodations Exempt from the Tax.

Code Section 12-36-2120(31) exempts from the sales tax on accommodations the gross proceeds accruing or proceeding from “vacation time sharing plans, vacation multiple ownership interests, and exchanges of interests in vacation time sharing plans and vacation multiple ownership interests as provided by Chapter 32 of Title 27, and any other exchange of accommodations in which the accommodations to be exchanged are the primary consideration.”

117-307.6. Accommodations Furnished to the Federal Government or Federal Government Employees.

Charges for hotel and motel accommodations to a federal employee on official government business are exempt from sales tax pursuant to Code Section 12-36-2120 if the accommodations are purchased directly by the federal government.

Therefore, the 7% sales tax on accommodations is not applicable when:

1. The federal government is billed directly by the retailer;

2. The federal employee pays by government check; or,

3. The federal employee pays by government credit card and the federal government is billed directly by the credit card company.

Charges for hotel and motel accommodations to a federal employee on official government business are subject to the sales tax if the accommodations are purchased by the federal employee, even if the employee is reimbursed for the charges. This includes transactions in which:

1. The federal employee pays by personal check; or,

2. The federal employee pays by credit card, is billed directly by the credit card company, and is reimbursed by the federal government.

Note: The presentation by a federal employee of a tax exemption certificate issued by the federal government is not sufficient to exempt the transaction from the tax. In order to be tax exempt, a transaction involving a tax exemption certificate must also meet one of the above requirements.

HISTORY: Added by State Register Volume 26, Issue No. 6, Part 2, eff June 28, 2002. Amended by State Register Volume 32, Issue No. 6, eff June 27, 2008.

117-307.7. The Application of Tax to Hurricane Rental Insurance Charges Imposed by Hotels, Motels, and Other Facilities.

An optional charge for hurricane rental insurance is not subject to either the 7% sales tax on accommodations under Code Section 12-36-920(A) or the 6% sales tax as an “additional guest charge” under Code Section 12-36-920(B). However, if the charge for hurricane rental insurance is mandatory, then the charge is subject to the 7% sales tax as a part of the charge for furnishing the sleeping accommodations.

Note: If a mandatory evacuation order or hurricane causes the complete cancellation of a person’s vacation because law enforcement will not allow anyone to enter the area during the entire time originally reserved for the vacation, or a hurricane destroys the rental unit and the vacationer cannot take occupancy of the unit or any replacement unit during the entire time originally reserved for the vacation, then the sleeping accommodations were not “furnished” and the charges for the sleeping accommodations are not subject to the tax. In addition, charges for the optional or mandatory hurricane rental insurance are not subject to the tax.

HISTORY: Added by State Register Volume 26, Issue No. 6, Part 2, eff June 28, 2002. Amended by State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 41, Issue No. 5, Doc. No. 4664, eff May 26, 2017.