
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC REVENUE RULING #04-1

SUBJECT: Accommodations Furnished to Government Employees, Foreign Diplomats, and Nonprofit Organization Employees
(Sales Tax)

EFFECTIVE DATE: Applies to all periods open under statute.

REFERENCES: S. C. Code Ann. Section 12-36-920 (Supp. 2000)
S. C. Code Ann. Section 12-36-2120 (Supp. 2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2000)
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 is an advisory opinion; it 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and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Background:

Special rules exist for sales tax imposed on accommodations furnished to certain government employees, foreign diplomats, and nonprofit organization employees. Questions often arise about the taxability of specific transactions involving these types of employees.

The purpose of this advisory opinion is to provide a reference tool to assist the hospitality industry in determining the proper taxation of accommodations to the following persons:

1. Government employees
2. Federal credit union employees
3. Foreign diplomats
4. Nonprofit Organization employees
5. American Red Cross employees

South Carolina's sales tax on accommodations is 7% (composed of a 5% State tax and a 2% accommodations tax.) The transactions discussed in this document pertain to the 7% accommodations tax and to any local option sales taxes collected by the Department. This document, however, does not address any local taxes on accommodations that may be due and collected directly by a county.

The Department has issued more detailed advisory opinions concerning its position on these issues that should be referred to for additional information. As of the date of this advisory opinion, the most recently published advisory opinions pertaining to this issue are:

1. SC Revenue Advisory Bulletin #02-3 – Federal Employee Credit Cards
2. SC Revenue Procedure #03-03 – Exemption Certificates – Sales by Certain Nonprofit Organizations
3. SC Information Letter #03-25 – Foreign Diplomats

Law:

Code Section 12-36-920 provides for a tax on accommodations and additional guest charges. It provides:

(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 12-36-2120 provides certain exemptions from sales tax. These exemptions include:

1. Exemption for foreign diplomats. Code Section 12-36-2120(1) exempts sales of tangible personal property which the State is prohibited from taxing by the Constitution or laws of the United States of America or this State;
2. Exemption for federal government, including federally chartered credit unions and the American Red Cross. Code Section 12-36-2120(2) exempts tangible personal property sold to the federal government.
3. Exemption for nonprofit organizations. Code Section 12-36-2120(41) exempts items sold by organizations under Section 12-37-220A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24), if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual. Code Section 12-36-2120(47) exempts tangible personal property sold to charitable hospitals predominately serving children exempt under Section 12-37-220, where care is provided without charge to the patient.

Taxable versus Exempt Accommodations for Certain Persons:

I. Federal Government Employees

General Rule. The taxability of accommodations furnished to a federal government employee depends upon whether the sale is between the retailer and the employee or between the retailer and the federal government.

The general rule is as follows:

1. **Exempt Sale.** The sale to the federal government is exempt from sales tax if: (1) the federal government is billed directly for the transaction, (2) the federal employee uses a credit card

that is billed directly to the federal government, or (3) the federal employee pays with a federal government check.

2. **Taxable Sale.** The sale to the federal government employee is subject to sales tax when the employee pays for the charge and is reimbursed by the federal government.

Credit Cards Used by Federal Government Employees. The following briefly explains the credit cards that may be used by a federal employee for accommodations and the applicability of sales tax on these accommodations.

1. **Travel Cards.** This card is used at hotels, restaurants, and similar travel-related venues. The taxability of the purchase depends on whether the employee or the federal government is billed as described below:

- a. **Taxable Sale.** Travel cards that are billed to the employee are subject to sales tax. These cards begin with the following numbers:
#4486 and the sixth digit is 1, 2, 3 or 4;
#4716 and the sixth digit is 1, 2, 3 or 4; or
#5568 and the sixth digit is 1, 2, 3 or 4.
- b. **Exempt Sale.** Travel cards that do not contain the above number sequences are billed directly to the federal government. Purchases with such cards are exempt from sales tax.

2. **Integrated or combined cards.** This card begins with account number 5568-16 and is used for both taxable and exempt purposes. The merchant's code tells the bank whether to bill federal government or the employee. Currently, this card is used only by the Department of the Interior.

- a. **Taxable Sale of lodging and restaurant food.** These sales are billed to the employee and are subject to sales tax, with one exception for employees of the Bureau of Reclamation. Sales to an employee from the Bureau of Reclamation using an integrated card with account number 5568-16 are exempt from sales tax.
- b. **Exempt Sale of office supplies and related tangible goods.** These sales are billed directly to the federal government and are exempt from the tax.

II. Sales to State Government Employees

Sales of accommodations to state government employees are subject to sales tax regardless of whether the state government or the employee pays directly for the charges.

III. Sales to Federal Credit Union Employee

South Carolina Attorney General Opinion #S-OAG-59 concluded that federally chartered credit unions are instrumentalities of the federal government. Accordingly, sales of accommodations and tangible personal property to a federal credit union are exempt from sales tax.

General Rule. The general rule in determining the taxability of accommodations furnished to a federal credit union employee depends upon: (1) whether the charges are paid directly by the employee of the federal credit union or paid directly by the federal credit union and (2) whether the employee is an employee of a federal credit union or an association.

The general rule is as follows:

1. **Exempt Sale.** The sale to the federal credit union is exempt from sales tax if: (1) the federal credit union is billed directly for the transaction, (2) the federal credit union employee uses a credit card that is billed directly to the federal credit union, or (3) the federal credit union employee pays with a federal credit union check.

Note: The person being furnished accommodations must be an employee of the federal credit union to come within this exemption. For example, if the federal credit union employee works for an association that represents various federal credit unions and the association pays the charges, then the accommodations are taxable since the association is not a federal credit union.

2. **Taxable Sale.** The sale to the federal credit union employee is subject to sales tax when the employee pays for the charge and is reimbursed by the federal credit union.

Recordkeeping. If a person from a federal credit union presents a credit card, the retailer may consider asking for proof from the guest that the federal credit union will be billed by the credit card company and the federal credit union will pay the bill directly.

IV. Foreign Diplomats

General Rule. Sales to foreign officials are exempt from the sales tax in accordance with the type of card issued by, and the level of exemption authorized by, the Office of Foreign Missions. The exemption is only valid for the person whose photo appears on the card. Vendors may ask to see additional forms of identification, such as diplomatic I.D., or driver's license.

Exemption Cards. The Office of Foreign Missions issues two different types of tax exemption cards to eligible foreign officials:

1. **Cards for personal purchases.** This card is used for exemption from state and local sales, restaurant, lodging, and similar taxes normally charged to a customer, and may be used only for the personal use of the bearer whose picture appears on the front of the card.
2. **Cards for mission or official business.** This card is issued to embassies, consulates, and international organizations for official purchases only and for the sole benefit of the mission identified on the face of the card. All purchases must be made in the name of the mission and paid for by mission check or credit card (not cash or personal check). Personal purchases are prohibited.

The tax exemption card contains the individual's name, photograph, mission employed by, an expiration date, and a protocol identification number for identification purposes. Each card will have one of two different levels of sales and use tax exemption and is indicated by the color of the card and the written explanation in the colored box. A card with a blue stripe exempts the bearer from all state and local taxes nationwide on all personal and official purchases. A card with a yellow stripe allows a full tax exemption on all personal and official purchases except restricted categories or amounts identified on the face of the card. The tax exemption card, however, is not valid for exemption from taxes on telephones, other utilities, or gasoline purchases.

Recordkeeping. Retailers making sales to foreign officials are required to record the protocol identification number from the tax exemption card on the invoice, bill of sale, cash register tape, or other written evidence of the transaction.

V. Nonprofit Organizations

Taxable Sale. The sale of accommodations to employees of a nonprofit organization is subject to sales tax regardless of how the transaction is billed, except as noted below under the "exempt sale" section.

Note: A qualifying nonprofit organization exempt under Section 12-37-220A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24) is exempt from sales tax only on purchases that are to be resold by the nonprofit organization. Since the nonprofit organization is considered to be purchasing the accommodations for its own use, and not for resale, the sales of accommodations to a nonprofit organization and employees of the nonprofit organization listed in Code Section 12-36-2120(41) are subject to sales tax.

Exempt Sale. The sale of accommodations to an employee of a charitable hospital predominately serving children exempt under Section 12-37-220, where care is provided without charge to the patient as provided in Code Section 12-36-2120(47) is exempt from sales tax if: (1) the qualifying charitable hospital is billed directly for the transaction, (2) the qualifying charitable hospital employee uses a credit card that is billed directly to the hospital, or (3) the nonprofit employee pays for the charge with the hospital's check.

VI. Sales to American Red Cross Employee

The American Red Cross is an instrumentality of the United States government. See *Department of Employment et.al. v. United States*, 385 U.S. 355 (1966). Accordingly, sales of accommodations and tangible personal property to the American Red Cross are exempt from sales tax.

General Rule. The general rule in determining the taxability of accommodations furnished to an American Red Cross employee depends upon whether the charges are paid directly by the employee of the American Red Cross or paid directly by the American Red Cross.

The general rule is as follows:

1. **Exempt Sale.** The sale to the American Red Cross is exempt from sales tax if: (1) the American Red Cross is billed directly for the transaction, (2) the American Red Cross employee uses a credit card that is billed directly to the American Red Cross, or (3) the American Red Cross employee pays with an American Red Cross check.
2. **Taxable Sale.** The sale to the American Red Cross employee is subject to sales tax when the employee pays for the charge and is reimbursed by the American Red Cross.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank III, Director

February 9 _____, 2004
Columbia, South Carolina