
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 #09-7

SUBJECT: Rentals to Transients at Residential Retirement Communities
(Sales & Use Tax)

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

REFERENCES: S. C. Code Ann. Section 12-36-920 (2000, 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) (Supp. 2008)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

If a residential retirement community sets aside a unit to rent on a nightly, weekly or monthly basis to family and friends of homeowners as described in the Facts below, are such rentals subject to the sales tax on accommodations?

Conclusion:

If a residential retirement community sets aside a unit to rent on a nightly, weekly or monthly basis to family and friends of homeowners as described in the Facts below, such rentals are subject to the sales tax on accommodations unless the same unit is provided to the same person for a period of ninety or more continuous days.

Note: Some residential retirement facilities are operated by nonprofit organizations. If the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), rentals of accommodations by the nonprofit organization will not be subject to the sales tax. For a determination as to whether it qualifies for the exemption in Code Section 12-36-2120(41), a nonprofit organization may apply for the exemption using a Form ST-387. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Facts:

As an amenity to their residents, some residential retirement communities in South Carolina will set aside a unit for short-term rentals. Out-of-town family members and friends of the residents of the residential retirement community may rent the unit while visiting. Payment for this unit may be made by the resident on behalf of the visitor or by the visitor.

The unit is rented on a short-term basis, typically daily or weekly, but in some cases may be available to rent for a month or more.

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 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 place of abode.”¹

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(A) concerns certain facilities that are not subject to the sales tax on charges for accommodations, and reads in part:

(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. ...

¹ Code Section 12-36-510 requires all retailers to obtain a retail license from the Department.

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(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.

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.

Therefore, if a residential retirement community sets aside a unit to rent on a nightly, weekly or monthly basis to family and friends of homeowners, as described in the Facts, such rentals are subject to the sales tax on accommodations unless the same unit is provided to the same person for a period of ninety or more continuous days.

Note: Some residential retirement facilities are operated by nonprofit organizations. If the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), rentals of accommodations by the nonprofit organization will not be subject to the sales tax. For a determination as to whether it qualifies for the exemption in Code Section 12-36-2120(41), a nonprofit organization may apply for the exemption using a Form ST-387. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

June 16, 2009
Columbia, South Carolina