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State of South Carolina  
**Department of Revenue**  
300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 125, Columbia, South Carolina 29214

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SC REVENUE RULING #14-7

**SUBJECT:** Hurricane Rental Insurance  
(Sales Tax on Accommodations and Additional Guest Charges)

**EFFECTIVE DATE:** July 1, 2014

**SUPERSEDES:** SC Revenue Ruling #05-6 and all previous advisory opinions and any oral directives in conflict herewith.

**REFERENCE:** S.C. Code Ann. Section 12-36-920 (2014; As Amended by Act No.172 and Act No. 259 of 2014)  
SC Regulation 117-307.1

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Questions:

1. Is an optional charge for hurricane rental insurance, as discussed in the facts, subject to the sales tax?
2. Is a mandatory charge for hurricane rental insurance, as discussed in the facts, subject to the sales tax?

Conclusions:

1. An optional charge for hurricane rental insurance, as discussed in the facts, is not subject to the sales tax. As an optional charge, it is not a part of the charge for the sleeping accommodations under Code Section 12-36-920(A) and it is not an "additional guest charge" under Code Section 12-36-920(B).

2. A mandatory charge for hurricane rental insurance, as discussed in the facts, is subject to the 7% sales tax under Code Section 12-36-920(A) as a part of the charge for furnishing the sleeping accommodations.

Note: Sleeping accommodations are “furnished” if the vacationer takes occupancy, or has the right to take occupancy, of a rental unit for any or all of the time previously agreed to when the reservations were made. 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.

If the sleeping accommodations are furnished because the vacationer actually takes occupancy, or has the right to take occupancy of a rental unit (but chooses not to), for any or all the time previously agreed to when the reservations were made, then the charges for the sleeping accommodations are subject to the tax. If the charges for the hurricane rental insurance are mandatory, then such charges are part of the charge for the accommodations and subject to the tax. If charges for hurricane rental insurance are optional, then such charges are not subject to the sales tax.

Facts:

Persons offering sleeping accommodations to transients will typically provide various amenities and services for an additional fee. The charges for many such amenities and services are discussed in SC Revenue Ruling #14-5.

Along the coast of South Carolina, many persons furnishing accommodations offer hurricane rental insurance. For a fee paid to the person offering sleeping accommodations, a guest may obtain hurricane rental insurance. This insurance will protect the vacationer against a mandatory evacuation due to a hurricane. In most cases, the charge for the hurricane rental insurance is optional.

For example, if a vacationer has rented a home for one week beginning on a Saturday and a mandatory evacuation order is issued on Monday, then the insurance will cover the vacationer for the time lost as a result of the evacuation order. In addition, the insurance may also cover circumstances in which the vacationer is not even able to take occupancy of the home and must forego the vacation because of the mandatory evacuation and subsequent damage caused by a hurricane.

Discussion:

Code Section 12-36-920, as amended by Act No. 172 and Act No. 259 (Section 3) of 2014,<sup>1</sup> imposes a sales tax upon accommodations and "additional guest charges" and reads, in part:

(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:

(1) 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; or

(2) to gross proceeds from rental income wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g) as that code is defined in Section 12-6-40(A).

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) or separately stated optional charges on a bill to a customer for amenities, entertainment, special items in promotional tourist packages, and other guest services.

(B) A sales tax of [six]<sup>2</sup> 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. For purposes of this subsection, additional guest charges are limited to charges for:

(1) room service;

(2) laundering and dry cleaning services;

(3) in-room movies;

(4) telephone service; and

(5) rentals of meeting rooms.

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<sup>1</sup> Act No. 172 amended Code Section 12-36-920 with respect to the taxation of "additional guest charges" and Act No. 259, Section 3, amended Code Section 12-36-920(A) to exempt certain residential rentals.

<sup>2</sup> Code Section 12-36-1110 increased the tax rate on "additional guest charges" from 5% to 6%.

Furthermore, Commission Decision #95-27 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." With the amendment to Code Section 12-36-920 by Act No.172 of 2014, effective July 1, 2014, the term "additional guest charge" means an amount which is added to the guest's room charge for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms.

Therefore, charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms 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."

Based on the above, it is the opinion of the Department that an optional charge for hurricane rental insurance, as discussed in the facts, 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.

With respect to this issue, we must also address scenarios in which a person reserves sleeping accommodations but is unable to occupy such accommodations, or is required to evacuate the sleeping accommodations during the vacation. In addressing this matter, it is important to review issues with respect to "Cancellations" as established in Questions 29 and 30 of SC Regulation 117-307.1. The issues addressed in these questions and answers are analogous to certain situations with respect to hurricane rental insurance and these questions and answers from the regulation read as follows:

29. 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 #30 for information concerning when accommodations are canceled but an administrative fee or deposit is charged or retained.
30. 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. See Anonymous v. South Carolina Department of Revenue, 97-ALJ-17-0263-CC (April 24, 1998) and Anonymous v. South Carolina Department of Revenue, 97-ALJ-17-0379-CC (April 24, 1998).

Note: See Question #29 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).

Based on the above, sleeping accommodations are “furnished” if the vacationer takes occupancy, or has the right to take occupancy, of a rental unit for any or all of the time previously agreed to when the reservations were made. 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.

If the sleeping accommodations are furnished because the vacationer actually takes occupancy, or has the right to take occupancy of a rental unit (but chooses not to), for any or all the time previously agreed to when the reservations were made, then the charges for the sleeping accommodations are subject to the tax. If the charges for the hurricane rental insurance are mandatory, then such charges are part of the charge for the accommodations and subject to the tax. If charges for hurricane rental insurance are optional, then such charges are not subject to the sales tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III  
Rick Reames III, Director

October 28 \_\_\_\_\_, 2014  
Columbia, South Carolina