



SC REVENUE RULING #88-8

SUBJECT: Hotel Accommodations for Federal Employees
(Sales Tax)

EFFECTIVE DATE: June 1, 1988

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

REFERENCE: S.C. Code Ann. Section 12-35-1120 (supp. 1987)
S.C. Code Ann. Section 12-35-515 (Supp. 1987)
S.C. Code Ann. Section 12-35-710 (Supp. 1987)
S.C. Code Ann. Section 12-35-550(1) (1976)
S.C. Code Ann. Section 12-35-550(42) (Supp. 1987)

AUTHORITY: S.C. 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until superseded by a Regulation or is rescinded by a subsequent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.

Question:

Are charges for hotel and motel accommodations to federal employees subject to taxation
when the employees are billed directly and reimbursed by the federal government?

Facts:

Certain federal employees have been presenting a "Room Tax Exemption Certificate" to
Charleston area hotels. Based upon this certificate, the hotels have not been remitting the
tax on the gross proceeds on such accommodations.

S.C. Code Section 12-35-1120 imposes a tax of 4 percent on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings or accommodations. Section 12-35-515 imposes an additional tax of 1 percent.

Code Section 12-35-710 ("Accommodations Tax") imposes a tax of 2 percent on the gross proceeds from the rental of transient accommodations. Further, all provisions of the sales tax law, except Section 12-35-520, are applicable to this section. Therefore, the total tax rate imposed on the furnishing of accommodations to transients is 7 percent.

Code Section 12-35-550, subsections (1) and (42), exempt from the sales, use and accommodations taxes:

(1) The gross proceeds of the sale of tangible personal property or the gross receipts of any business which the state is prohibited from taxing under the Constitution or laws of the United States of America or under the constitution of this state.

* * * *

(42) The gross proceeds of the sale of tangible personal property to the federal government, not including gross proceeds subject to the tax under [Section] 12-35-1140 and [section] 12-35-1150 of the 1976 Code."

Discussion:

The courts have consistently held that exemptions must be strictly construed against the exemption and in favor of the tax. Therefore, to fall within the exemption provided for at 12-35-550, subsections (1) and (42), the taxing of the sales must be prohibited "under the Constitution or laws of the United States" or the sales must be "to the Federal Government."

The U.S. Supreme Court, in *Alabama v. King & Boozer*, 314 U.S. 1, 62 S.Ct. 43, ruled,

"We think, as the Supreme Court of Alabama held, that the legal effect of the transaction which we have detailed was to obligate the contractors to pay for the lumber. The lumber was sold and delivered on the orders of the contractors which stipulated that the government should not be bound to pay for it. It was in fact paid for by the contractors who were reimbursed by the government pursuant to their contract with it." (Emphasis added.)

It appears that the facts in this instance are analogous to *Alabama v. King & Boozer*. The federal employees are billed directly; they pay with a personal check or credit card; and, at some later date, are reimbursed by the government.

A recent Maryland Court of Appeals case, Comptroller of the Treasury v. World Inns, Inc. t/a Best Western Motels, 528 A.2d 477 (1987) is more on point. The case involved the same issue, taxing accommodations provided to federal and state government employees. The court held that:

It is clear from United States Supreme Court precedent that constitutional intergovernmental tax immunity is only properly granted when the legal incidences of a state tax falls directly on the United States. It is also clear that when a state statute requires a seller to collect a sales tax from a purchaser, the legal incidence of that tax falls on the purchaser. The Maryland Retail 4/87 Sales Tax Act defines "purchasers" as "any person...to whom services are rendered." [Section] 324(c). The act requires the "vendor to collect from the purchaser" a 5 percent sales tax on the rental of any hotel room. [Sections] 325, 324(f)(5). In the case at bar, the federal employees were the "purchasers" within the meaning of the act. They contracted directly with World Inns for the rental of rooms and paid for the rooms and with their personal funds. The federal government was in no sense a party to the room rental arrangement. Consequently, the legal incidence of the tax fell on the employees and not on the United States. (emphasis added)

The Maryland statute exempts from the sales tax "sales to the state of Maryland or any of its political subdivisions." With respect to accommodations provided to state government employees the court held that "[t]he `sale' of the room was to the state employee, and not to the state of Maryland.... Therefore, the exemption does not apply."

In addition, the Maryland court cited the case of Keystone Auto Leasing, Inc. v. Norberg, 486 A.2d 613 (R.I. 1985). In that case the question presented was whether a federal employee who pays for the rental of an automobile with personal funds, while on government business, may be required to pay the state's sales tax. The Rhode Island Supreme Court concluded that when federal employees lease automobiles and pay for them with cash or personal credit cards, the legal incidence of the tax does not fall on the federal government. Like Maryland, Rhode Island's sales tax is a vendee tax which requires the seller to collect the tax from the purchaser.

In summary, the court held that the legal incidence of the tax did not fall upon the federal or state government and that the transaction was between the hotel and the government employee. The federal and state governments were not "a party to the room rental arrangement[s]."

Conclusion:

The transactions in question are between the hotel and the federal employee. The legal incidence of the tax does not fall upon the federal government whether the sales tax is a vendor or vendee tax. The exemption found in Section 12-35-550(1) therefore does not apply. In addition, since the federal government is not a party to the transactions, the exemption found in Section 12-35-550(42) is not applicable. The transactions in question are therefore subject to the 7 percent tax on transient accommodations.

However, where the federal government is billed directly or the employee uses a government credit card whereby the government is subsequently billed or the employee uses a government check, the rental constitutes a sale to the federal government, which would be exempt pursuant to Code Section 12-35-550(42). (June 1, 1988)

NOTE: See Information Letter IL-88-11.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.
S. Hunter Howard, Jr., Chairman

s/John M. Rucker
John M. Rucker, Commissioner

s/A. Crawford Clarkson Jr.
A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
June 1, 1988