
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #97-3(TAX)

SUBJECT: Charges by Hotels and Motels
(Sales Tax and Tax on Additional Guest Charges)

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

SUPERSEDES: SC Revenue Ruling #88-2
SC Revenue Ruling #89-17

REFERENCE: S.C. Code Ann. Section 12-36-920 (Supp. 1996)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1996)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

LAW:

Code Section 12-36-920 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 where the facilities consist of less than six sleeping rooms, contained in a single building, 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.

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.”

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 5% 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.

QUESTIONS AND ANSWERS:

The following questions and answers are intended to provide guidance with respect to the provisions of Code Section 12-36-920. These questions and answers use examples to illustrate Department policy.

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. Therefore, it is not an additional guest charge.
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 5%. 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. (See Commission Decision #93-66.)
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 5% 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. (See also Commission Decision #93-66.)

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%. Since the maid service is a service provided with the room, it is not an additional guest charge.
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 necessarily make the charge an additional guest charge. 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 necessarily make the charge an additional guest charge. 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 taxed at 5%. The \$50.00 optional maid service is provided over and above the services provided with the unit. The \$50.00 is therefore an additional guest charge subject to the tax at 5%.
9. Q. If a rental agency charges \$800.00 per week for a condominium unit, 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. The \$20.00 is therefore an additional guest charge subject to the tax at 5%.

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. Therefore, it is not an additional guest charge.
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 5%. 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. (See Commission Decision #95-26.)

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, Code Section 12-36-110 and Commission Decision #93-66.)
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 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 5% 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 5% under Chapter 36 - Code Section 12-36-910.

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 5% under Chapter 36 - Code Section 12-36-910.

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 (See SC Revenue Ruling #88-2)¹, 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 5% sales tax on the sale 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 5% sales tax on the sale of meal.

If the hotel' 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 liable for the 5% tax on the other portion of the \$100 paid by the guest since it now represents an additional guest charge for the service of making the golf arrangements that were not used. This additional guest charge will be equal to the green fee that the hotel would have had to pay to the golf course. In other words, if the hotel would have been required to pay \$30 had the guest played golf, then the additional guest charge would be \$30. As such, the hotel would be liable for the 7% tax on \$65

¹This policy has been consistent since 1988 and did not change when the sales and use tax law under Chapter 35 of Title 12 was recodified in 1991 as Chapter 36 of Title 12.

and the 5% tax (as an additional guest charge for the service) on \$30 and the restaurant would be liable for the 5% sales tax on the sale of the meal.

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. However, if by the end of the month (the time the hotel must pay the golf course for all guests' green fees) the hotel has sent 1000 of its guests to the golf course to play golf, then the hotel is only required to pay the golf course \$20 per guest.

The hotel would be liable for the 7% tax on \$75 (\$100 - \$25) if the hotel has met the requirement of sending 1000 of its guests to the golf course to play golf. The golf course would be liable for the 5% admissions tax on \$20 and the restaurant would be liable for the 5% sales tax on the sale of the meal.

If the hotel has not met the requirement of sending 1000 of its guests to the golf course to play golf, 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 5% sales tax on the sale of the meal.

Example #3: 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 5% 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. 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 since the rental charge for the bike is a sale of tangible personal property and is otherwise taxed at 5% 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 and is therefore not an additional guest 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%. The newspaper is not an additional guest charge since the newspaper is part of the services provided with the room for the \$80.00 charge.
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%, while the charge for the newspaper, as an additional guest charge, is taxed at 5%. The newspaper that is provided for \$2.00 is over and above the services customarily provided with the room at the hotel.

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, as an additional guest charge, is taxed at 5%.
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. 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.

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 5%.
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 5% 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.

OTHER SERVICES

27. Q. If a hotel charges \$100.00 for a room, and the room contains a refreshment bar so 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 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 5% as a sale of tangible personal property under Code Section 12-36-910. These charges are not additional guest charges since they are "otherwise taxed" under Chapter 36.

Note: This document references tax rates of 7% for the sales tax on accommodations, 5% for the sales tax on additional guest charges, and 5% for the sales tax on sales or rentals of tangible personal property. In those counties that impose the 1% local option sales and use tax, the tax rates are: 8% 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. The 1% local option sales and use tax does not apply to the admissions tax.

In addition, several issues concerning the sales tax on accommodations and the tax on additional guest charges are presently under appeal and may be litigated. Once these appeals are resolved, the Department may revise this ruling.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

Columbia, South Carolina
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