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SC TECHNICAL ADVICE MEMORANDUM #90-5

TO: Mr. Marvin N. Davant, Director
Field Services Division

FROM: Mr. John P. McCormack, Manager
Tax Policy and Procedures Department

DATE: March 7, 1990

SUBJECT: Boat Dockage and Storage Rentals
(Sales and Accommodations Tax)

REFERENCE: SC Code Ann. Section 12-35-1120 (Supp. 1988)
SC Code Ann. Section 12-35-710 (Supp. 1988)

AUTHORITY: SC Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Questions:

1. Are short term rentals of dockage for cabin vessels, whereby the lessor furnishes a wet slip and other amenities, subject to the sales and accommodations tax under Code Sections 12-35-1120 and 12-35-710?
2. Are short term rentals of dockage for open craft, whereby the lessor furnishes a wet slip and access to amenities, subject to the sales and accommodations tax under Code Sections 12-35-1120 and 12-35-710?
3. Are short term rentals of dry storage for all types of vessels subject to the sales and accommodations tax, pursuant to Code Sections 12-35-1120 and 12-35-710?

Facts:

Advice has been requested on the applicability of the sales and accommodations tax to short term rentals of wet and dry boat storage facilities in the following situations:

1. For 80-150 foot cabin vessels which contain sleeping compartments and average a stay in SC waters from one day to one week, the lessor furnishes a wet slip and amenities such as electricity, water, sewage, showers and cable television. Generally, the fee is based on a per foot charge.
2. For 13-20 foot open crafts which contain no sleeping, restroom or kitchen facilities, the boat owner must make sleeping arrangements elsewhere. However, the marina furnishes laundry and restroom facilities. A per day fee is charged to dock the boat, with the average stay being 2 to 3 days.
3. For dry storage rental which exists for all types of vessels, the storage consists of 3 to 7 racks whereby boats are lifted out of the water for storage. The boats are launched upon request by the owner and later returned to dry storage.

Discussion:

The issue at hand is whether the furnishing of wet slips and dry storage for boats constitute accommodations.

Code Section 12-35-1120 imposes the sales tax upon transient accommodations, and reads:

Notwithstanding any other provision of law, the license and the sales or use tax imposed by this chapter shall apply with respect to the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, 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 in a single building which is used as the place of abode of the owner or operator of such facilities. The gross proceeds derived from the lease or rental of accommodations supplied to the same person for a period of ninety continuous days shall not be considered proceeds from transients. The tax provided for in this section shall be at the rate of [five] percent.

Code Section 12-35-710 imposes a 2% accommodations tax and reads, in part:

(1) In addition to the tax levied in [Sections] 12-35-510, 12-35-810, and 12-35-1120 and Article 11 of Chapter 35 of Title 12, there is levied and imposed an additional sales tax of two percent of the gross proceeds from the rental of transient accommodations, including campgrounds, which are subject to the state sales tax.

Therefore, a seven percent tax (5% sales + 2% accommodations tax) is imposed on the "gross proceeds derived from the rental or charges for... accommodations".

The code does not, however, provide a definition for "accommodations".

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission, 273 S. C. 269, 255 SE 2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S. C. 43, 103 SE 2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 S.C. 484, 60 SE 2d 682 (1950).

Webster's Ninth New Collegiate Dictionary defines "accommodations", in part, as "something supplied for convenience or to satisfy a need: as lodging, food, and services or traveling space and related services."

Furthermore, the following quote from 73 AmJur 2d, Statutes, Section 203, provides some guidance:

It is a general rule that the courts may not, by construction, insert words or phrases in a statute,...when applied to a subject about which nothing whatever is said, and which, to all apperances was not in the minds of the legislature at the time of the enactment of the law. Under such circumstances, new provisions or ideas may not be interpolated in a statute, or ingrafted thereon.

In 1976, Code Section 12-35-1120 was amended by Act No. 709, Part II, Section 5 to add the words "campground spaces" and "campground" in the first sentence of the section. Prior to this amendment, charges for campground spaces were not subject to the tax on transient accommodations.

In summary, it does not appear to be the legislative intent to include boat slips or storage docks within the realm of the sales and accommodations tax. Boat slips and storage docks are analogous to campground spaces, and would require specific listing in Code Sections 12-35-1120 and 12-35-710, similar to "campground spaces", to be subject to the sales and accommodations tax.

Conclusion:

1. & 2. The rental of wet slips, by a marina furnishing amenities such as electricity, water, sewage, showers, and cable television, are not subject to the sales and accommodations tax provided under Code Sections 12-35-1120 and 12-35-710.
3. The rental of dry storage for boats are not subject to the sales and accommodations tax provided under Code Sections 12-35-1120 and 12-35-710.