



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC REVENUE RULING #16-10

SUBJECT: Vacation Rentals of Residences, Vacation Homes, and Places of Abode for 15 Days or More a Year (Sales Tax on Accommodations)

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

SUPERSEDES: SC Revenue Ruling #04-12

REFERENCES: S.C. Code Ann. Section 12-36-920 (2014 and Supp. 2015)
S.C. Regulation 117-307.3 (2012)
S.C. Regulation 117-307.4 (2012)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
S.C. 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

Overview:

A 7% sales tax is imposed upon the gross proceeds from the rentals or charges of sleeping accommodations furnished at any place in which rooms, lodgings, or sleeping accommodations of any kind, including taxpayer residences, are furnished to transients. Certain exemptions from sales tax on accommodations under Code Section 12-36-920 apply, such as for "places of abode" with less than six sleeping rooms or rentals for 90 or more consecutive days.

In 2014, the statute was amended to provide an exemption from sales tax on accommodations for taxpayers who rent their residence for less than 15 days during the tax year. This new exemption is addressed in SC Revenue Ruling #15-4, "Vacation Rentals of Residence: Sales Tax Exemption for Rentals of Less Than 15 Days a Year and Property Tax Assessment Ratio of Rentals of Not More Than 72 Days a Year."

The purpose of this revenue ruling is to provide updated guidance regarding the sales taxes on accommodations to taxpayers who rent their vacation home or rooms in their residence for 15 or more days a year. This document does not address property taxes for vacation rentals. See Code Section 12-43-220(a) for applicable property tax rules.

Question:

If a person owns a home and rents his home or individual rooms in the home to others for 15 or more days during the year, are the rental charges under any of the following scenarios subject to the sales tax on accommodations under Code Section 12-36-920?

Assume the owner rents the entire home or individual rooms on his own through written publications, such as newspapers or real estate guides, his own website or a “Rent by Owner” website and does not employ the services of a real estate agent, broker, listing service or internet booking service to rent the home or the rooms.

Scenario 1 – Owner Rents Home on Short Term Basis. The owner uses his home only for one or two weeks a year for family vacations and rents it to others during the rest of the year on a weekly basis. The person renting the home from the owner may rent it for more than one week, but in no case does any one person rent it for 90 or more consecutive days.

Scenario 2 – Owner Rents Home for 90 Days or More Consecutively to One Person. The owner lives in his home for six months during the spring/summer months and rents it to a specific person/business for the remaining six months during the fall/winter months.

Scenario 3 – Owner Rents for Short and Long Terms. The owner rents his home to one vacationer for four months (120 consecutive days) and to all other vacationers for one to four weeks at a time during the remainder of the year. The owner may stay in his home during days the home is not rented.

Scenario 4 – Owner Rents Rooms in His “Place of Abode” with 5 or fewer bedrooms (i.e., Operates a Bed and Breakfast) on Short Term Basis. The owner lives in a home with five or fewer bedrooms throughout the year and also operates it as a “bed and breakfast” whereby the remaining bedrooms are rented to others on a daily or weekly basis. The owner serves as the innkeeper and provides the necessary amenities and services for each guest. Any one person does not rent a room for 90 or more consecutive days.

Scenario 5 – Owner Rents Rooms in His “Place of Abode” with 6 or more bedrooms (i.e., Operates a Bed and Breakfast) on Short Term Basis. The owner lives in a home with six or more bedrooms throughout the year and also operates it as a “bed and breakfast” whereby the remaining bedrooms are rented to others on a daily or weekly basis. The owner serves as the innkeeper and provides the necessary amenities and services for each guest. Any one person does not rent a room for 90 or more consecutive days.

Law and Discussion:

Code Section 12-36-920 imposes a sales tax on accommodations. It reads:

(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).¹

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 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. 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.

(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.

¹ This item was added in 2014. This document does not address the exemption for a home being rented that qualifies as a dwelling unit under Internal Revenue Code ("IRC") Section 280A(f) and the taxpayer uses the home during the tax year as a residence under IRC Section 280A(d). See SC Revenue Ruling #15-4 for guidance when renting a home for less than 15 days a year.

(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 individual’s place of abode.”

Code Section 12-36-510 establishes who, as a retailer or seller, must obtain a retail license before engaging in business. Code Section 12-36-510(B)(3) provides that a retail license is not required of persons furnishing accommodations to transients for one week or less in any calendar quarter. Item (B)(3) does not apply to rental agencies or persons having more than one rental unit. Accommodations taxes must be remitted annually, on forms prescribed by the Department, by April 15 of the following year.

Regulation 117-307.3 concerns certain facilities that are not subject to the sales tax on charges for accommodations, and states, 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. For this exception to apply, the facility must serve as the owner’s or operator’s “place of abode” during the same times at which the remaining sleeping rooms are rented to transients and the rooms must not be rented to transients by a person other than the owner or operator using the facility as his or her “place of abode.”

(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.

Regulation 117-307.4 concerns rentals of 90 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 individual or same business for a period of 90 or more continuous days or
2. The facility consists of less than six sleeping rooms, contained on the same premises, which is used as the “place of abode” of the individual who owns or operates such facility providing the owner (and not a real estate agent/on-line travel company) books the rental.

As stated above in Regulation 117-307.3, the exemption from sales tax on accommodations for a “place of abode” applies when the facility serves as the owner’s or operator’s “place of abode” during the same times at which the remaining sleeping rooms are rented to transients and the rooms are not rented to transients by a person other than the owner or operator using the facility as his “place of abode.” It has been the Department’s longstanding position that this exemption applies to bed and breakfast facilities where the owner is living on site as an innkeeper.

Conclusion:

The sales tax on accommodations under Code Section 12-36-920 is applicable to rental charges by a person who owns a home and rents his entire home or individual rooms in the home to others for 15 days or more during the year as described in the following scenarios.

Note: The conclusion under each scenario assumes the owner rents the entire home or individual rooms on his own through written publications, such as newspapers or real estate guides, his own website or a “Rent by Owner” website and does not employ the services of a real estate agent, broker, listing service or internet booking service to rent the home or the rooms.

Scenario 1 – Owner Rents Home on Short Term Basis. The owner uses his home only for one or two weeks a year for family vacations and rents it to others during the rest of the year on a weekly basis. The person renting the home from the owner may rent it for more than one week, but in no case does any one person rent it for 90 or more consecutive days. The rental charges do not qualify for an exemption and are subject to the sales tax on accommodations under Code Section 12-36-920.

Scenario 2 – Owner Rents for 90 Days or More Consecutively to One Person. The owner lives in his home for six months during the spring/summer months and rents it to a specific person/business for the remaining six months during the fall/winter months. The rental charges are not subject to the sales tax on accommodations under Code Section 12-36-920(A) since the home is provided to the same individual/business for a period of 90 or more continuous days.

Scenario 3 – Owner Rents for Short and Long Terms During Year. The owner rents his home to one vacationer for four months (120 consecutive days) and to all other vacationers for one to four weeks at a time during the remainder of the year. The owner may stay in his home during days the home is not rented. The rental charges to the one vacationer for a period of 90 continuous days or more (120 consecutive days in this example) is not subject to the sales tax on accommodations under Code Section 12-36-920(A). The rental charges to all other vacationers who rent for less than 90 consecutive days, however, are subject to the sales tax on accommodations under Code Section 12-36-920.

Scenario 4 – Owner Rents Rooms in His “Place of Abode” with 5 or fewer bedrooms (i.e., Operates a Bed and Breakfast) on Short Term Basis. The owner lives in a home with five or fewer bedrooms throughout the year and also operates it as a “bed and breakfast” whereby the remaining bedrooms are rented to others on a daily, weekly or monthly basis. The owner serves as the innkeeper and provides the necessary amenities and services for each guest. Any one person does not rent a room for more than 90 consecutive days. Under Code Section 12-36-920(A)(1), the rental charges are not subject to the sales tax on accommodations since the home, which has less than 6 sleeping rooms, serves as the owner’s “place of abode” during the same time at which the remaining rooms are rented to guests.

Scenario 5 – Owner Rents Rooms in His “Place of Abode” with 6 or more bedrooms (i.e., Operates a Bed and Breakfast) on Short Term Basis. The owner lives in a home with six or more bedrooms throughout the year and also operates it as a “bed and breakfast” whereby the remaining bedrooms are rented to others on a daily, weekly or monthly basis. The owner serves as the innkeeper and provides the necessary amenities and services for each guest. Any one person does not rent a room for more than 90 consecutive days. The rental charges do not qualify for an exemption and are subject to the sales tax on accommodations under Code Section 12-36-920.

Note: If a real estate agent, broker, listing service, or internet booking service (i.e., third party rental agent) rents the owner's home, or individual rooms in the owner's home, as described above, then the real estate agent, broker, listing service, or internet booking company is the retailer and is liable for the sales tax on accommodations for any rentals made by the real estate agent, broker, listing service, or internet booking service of less than 90 consecutive days. The rentals by a real estate agent, broker, listing service, or internet booking company do not qualify for the exemption for a facility that consists of less than six sleeping rooms, contained on the same premises, since the facility is not used as the "place of abode" of the real estate agent, broker, listing service, or internet booking service. See Regulation 117-307.3.

For additional information concerning the sales tax on accommodations, the sales tax on "additional guest charges," or the application of the sales or use tax to purchases of beds, linens, supplies and other items by an accommodations facility, see SC Regulation 117-307.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III
Rick Reames III, Director

July 27 _____, 2016
Columbia, South Carolina