Chapter 11

Accommodations

A. General Information

Imposition: A 7% sales tax is imposed upon the gross proceeds[1] from the rentals or charges for sleeping accommodations furnished at any place in which rooms, lodgings, or sleeping accommodations of any kind are furnished, including but not limited to:

- hotels
- motels
- inns
- campgrounds (campground spaces)
- tourist courts
- tourist camps
- condominiums
- residences

In addition, local sales taxes administered and collected by the Department on behalf of local jurisdictions are imposed upon the gross proceeds from the rentals or charges for sleeping accommodations.[2]

The sales tax on accommodations does not apply to:

> (1) the lease or rental of accommodations supplied to the same person for a period of 90 continuous days;[3]
>
> (2) the lease or rental of accommodations at a facility consisting 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; or

---

[1] Destination marketing fees, hotel marketing fees, and other similar service charges are subject to the 7% sales tax on accommodations. See SC Revenue Ruling #18-7.

[2] In addition, local governments may impose a local accommodations tax of up to 3%, and some municipalities may impose a beach preservation fee of up to 1%. These are in addition to the statewide sales and accommodations taxes and the local sales taxes administered and collected by the Department (if applicable). **The local accommodations tax and the beach preservation fee are collected by the local government imposing the tax or fee, not the Department of Revenue.**

[3] South Carolina Code §12-36-920(A) and SC Regulation 117-307.4.

(3) the gross proceeds from rental income wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g). For this exemption to apply, the taxpayer must rent the dwelling unit for less than 15 days during the taxable year and must use the dwelling unit as a residence (for personal purposes) 14 days or more during the taxable year.[4]

Liability: The person liable for the tax is the person in the business of furnishing the accommodations, whether such person is the owner or a real estate agent, listing service, broker, online travel company, or similar entity handling the accommodations. The person liable for the sales tax on accommodations must obtain a retail license and remit the tax to the Department on a monthly basis.

However, persons furnishing accommodations to transients for one week or less in any calendar quarter are not required to obtain a retail license, but are required to remit the tax annually by April 15th of the following calendar year.[5] In addition, persons who rent a dwelling unit for less than 15 days during the taxable year and who also use the dwelling unit as a residence (for personal purposes) for 14 days or more during the taxable year are not required to obtain a retail license.

The following examples illustrate the person liable for the sales tax on accommodations:

Owner Rents: Mr. Smith lives in Greenville, South Carolina and also owns a vacation home in Hilton Head, South Carolina. He uses the vacation home at various times throughout the year, but rents the vacation home on a weekly basis throughout the summer (more than 14 days)[6] and several other times throughout the year on a weekly basis.[7]

Mr. Smith is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of Beaufort County, with respect to the gross proceeds he receives from the rental of his vacation home. The tax must be remitted on a monthly basis.[8]

---

[4] SC Revenue Ruling #15-4. See also Internal Revenue Code Section 280A(d) for more details on when a dwelling unit is used as a residence.
[5] South Carolina Code §12-36-510(B)(3).
[6] See SC Revenue Ruling #16-10 for more information on vacation rentals of residences, vacation homes, and places of abode for 15 days or more a year.
[7] While it is possible for the same person to rent the vacation home for several consecutive weeks, in this example, all rentals are for less than 90 continuous days.
[8] See also Administrative Law Court decisions #07-ALJ-17-0407-CC (2009); #00-ALJ-17-0569-CC (2001); #96-ALJ-17-0380-CC (1997); and SC Revenue Ruling #16-10.

Listing Service Rents: Mr. Smith hires XYZ Vacation Rental Company to rent his Hilton Head, South Carolina vacation home on a weekly basis throughout the summer.[9]

XYZ Vacation Rental Company is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of Beaufort county, with respect to the gross proceeds XYZ Vacation Rental Company receives from the rental of the vacation home. The tax must be remitted on a monthly basis.[10]

Owner Rents for Less Than 15 Days during the Taxable Year: Mr. Smith lives in Greenville, South Carolina and also owns a vacation home in Hilton Head, South Carolina. He uses the vacation home throughout the year (more than 14 days), but he only rents the vacation home one weekend a year during the Heritage Golf Tournament.

Mr. Smith is not required to obtain a retail license and is not liable for the 7% sales tax on accommodations to the Department or any applicable local sales and use taxes administered and collected by the Department on behalf of Beaufort County, with respect to the gross proceeds he receives from the rental of his vacation home.[11]

Listing Service Rents a Client's Residence for Less Than 15 Days during the Taxable Year: Mr. Smith lives in Greenville, South Carolina and also owns a vacation home in Hilton Head, South Carolina. He uses the vacation home throughout the year (more than 14 days). Mr. Smith hires XYZ Vacation Rental Company to rent his Hilton Head, South Carolina vacation home for one weekend a year during the Heritage Golf Tournament.

XYZ Vacation Rental Company is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of Beaufort county, with respect to the gross proceeds XYZ Vacation Rental Company receives from the rental of the vacation home.

[9] While it is possible for the same person to rent the vacation home for several consecutive weeks, in this example, all rentals are for less than 90 continuous days.
[10] See also Administrative Law Court decisions #00-ALJ-17-0569-CC (2001) and #96-ALJ-17-0380-CC (1997).
[11] SC Revenue Ruling #15-4.

Rentals to Transients at Residential Retirement Communities:[12] As an amenity to their residents, ABC Residential Retirement Community sets aside a unit for short-term rentals. Out-of-town family members and friends of the residents of the residential retirement community may rent the unit while visiting. Payment for this unit may be made by the resident on behalf of the visitor or by the visitor. The unit is rented on a short-term basis, typically daily or weekly, but in some cases may be available to rent for a month or more.

ABC Residential Retirement Community is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of the local jurisdiction (*e.g.*, county, municipality), with respect to the gross proceeds of such nightly, weekly or monthly rentals to family and friends of homeowners, unless the same unit is provided to the same person for a period of ninety or more continuous days.[13]

Note: Some residential retirement facilities are operated by nonprofit organizations. If the nonprofit organization qualifies for the exemption under South Carolina Code §12-36-2120(41), rentals of accommodations by the nonprofit organization will not be subject to the sales tax. For a determination as to whether it qualifies for the exemption in South Carolina Code §12-36-2120(41), a nonprofit organization may apply for the exemption using a Form ST-387. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See South Carolina Revenue Procedure #03-6 for more information concerning the sales tax exemption under South Carolina Code §12-36-2120(41).

Online Travel Company (Hotel Intermediary): Through the Internet, potential hotel guests can search for available hotel rooms at the website of ABC Online Travel Company and make a reservation for a room at a hotel and location that best suits their needs. ABC Online Travel Company will charge the customer's credit card for the total reservation price at the time the reservation is booked. ABC Online Travel Company has previously negotiated a price it will pay for the room to be used by the guest. The guest will not pay any additional amount to the hotel for the room. However, if the guest takes advantage of any additional services at the hotel, then the guest must pay the charges for such services (if any) to the hotel, not the ABC Online Travel Company. This method of doing business by ABC Online Travel Company is generally referred to as the "merchant model."

[12] See South Carolina Revenue Ruling #09-7.
[13] SC Revenue Ruling #15-4.

ABC Online Travel Company is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of the local jurisdiction imposing the local sales and use tax, with respect to the gross proceeds ABC Online Travel Company receives from the rental of the hotel room. ABC Online Travel Company's "gross proceeds" is the total amount it receives from its customer with no deduction for any labor or service.

The tax must be remitted on a monthly basis. The hotel is liable for the tax on any "additional guest charges" it charges the guest directly as well as the tax on room rental charges and "additional guest charges" it charges other guests who directly reserves rooms with the hotel as opposed to an online travel company.

Note: The South Carolina Supreme Court upheld the imposition of the sales tax on accommodations on an online travel company in the case of *Travelscape LLC v. South Carolina Department of Revenue*, 391 S.C. 89, 705 S.E.2d 28, (2011).

Notification Requirements:[14] The statute imposing the sales tax on accommodations requires real estate agents, listing services, brokers or similar entities handling the accommodations for an owner to notify the Department "if rental property, previously listed by them, is dropped from their listings."[15]

Therefore, if a real estate agent, broker, or similar listing service is handling the accommodations for an owner of a home, condominium unit, timeshare unit or other rental property and is remitting the 7% state sales tax on accommodations on the rental of that property, then the real estate agent, broker, or similar listing service must notify the Department if the owner decides to no longer list that rental property with them.

The notification should be sent to:

ATTN: Accommodations Notification Information
South Carolina Department of Revenue
Business Tax Resolution
P.O. Box 125
Columbia, South Carolina 29214-0840

The notifications should include the following information concerning each listing:

1. Name of the owner of the rental property,
2. Address of the owner of the rental property,
3. Address of the rental property, and

[14] SC Information Letter #11-19
[15] South Carolina Code §12-36-920(C).

4. The date the rental property was dropped from the listings of the real estate agent, broker, or similar listing service.

The notification may be, but does not need to be, sent each time a listing is dropped. The notification may be sent twice a year – once, by July 31st, for all listings dropped from January through June, and once, by January 31st, for all listings dropped from July through December.

"Rent by Owner" Vacation Rental Websites:[16] In 2014, the South Carolina General Assembly enacted the "Fairness in Lodging Act" (Act No. 261 of 2014). The purpose of this law is to improve compliance with state and local accommodations tax laws.

In addition to the 7% State sales tax on accommodations, plus any applicable local sales tax collected by the Department on behalf of the local jurisdiction, municipalities and counties may impose a local accommodations tax of up to 3% that the municipality or county collects directly.

Under the "Fairness in Lodging Act," the Department and municipalities and counties will be sharing information to ensure better compliance with the law. In addition, the Department must identify websites containing "rent by owner" vacation rental opportunities and request that such websites post a statement notifying all owners of South Carolina rental properties that they must be licensed and must remit all applicable state and local fees and taxes on charges and rentals derived from the furnishing of sleeping accommodations, unless the rental is otherwise exempt under the law.

It is recommended that websites containing "rent by owner" vacation rental opportunities place a statement, similar to the one below, on their website concerning South Carolina:

> Persons furnishing sleeping accommodations in South Carolina for vacation rental purposes must be licensed and must remit (unless otherwise exempt) the 7% state sales tax, plus any applicable local sales tax, to the South Carolina Department of Revenue, and must also remit any applicable local accommodations tax collected directly by the municipality and county in which the property is located to the applicable municipality and county.

The statement may be placed anywhere on the website, including the webpage on which the owner of the vacation rental property first registers with the website and posts their property for rental.

For information on local accommodations taxes collected directly by municipalities and counties, visit the website of the municipality and county in which the property is located.

[16] SC Information Letter #15-4.

B. Transactions Not Subject to the Sales Tax on Accommodations

The following provides examples of transactions that are not subject to the sales tax on accommodations as a result of (1) exclusions or exemptions provided in federal or state law and (2) transactions that do not fall within the imposition of the sales tax on accommodations. In addition, some examples of exclusions or exemptions also include situations where the tax is applicable to demonstrate the limitations of the exclusion or exemption.

General Exclusions

90 Day Rentals: The lease or rental of accommodations supplied to the same person (same room, same person) for a period of 90 continuous days.[17]

The following two examples illustrate the application of this exclusion:

Owner Rents for 90 Days or More Consecutively to One Person:[18] W owns a home and 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.

Owner Rents for Short and Long Terms During Year:[19] X owns a home and 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. X 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) are 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.

[17] South Carolina Code §12-36-920(A) and SC Regulation 117-307.4.
[18] See South Carolina Revenue Ruling #16-10.
[19] See South Carolina Revenue Ruling #16-10.

Rentals of Residence for Less Than 15 Days: The lease or rental of a dwelling unit by its owner for less than 15 days during the taxable year, provided the owner of the dwelling unit uses it as a residence (used for personal purposes) for 14 days or more during the taxable year.[20]

Five Sleeping Rooms or Less: The lease or rental of accommodations at a facility consisting 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.[21] (Note: This exemption requires the facility to contain less than six sleeping rooms. This includes the sleeping room of the owner or operator of the facility. Therefore, the at least one of the five sleeping rooms available at the facility must be the sleeping room of the owner or operator.)

For this exclusion 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."[22]

The following four examples[23] illustrate the application of this exclusion for a facility with five or less sleeping rooms:

> Owner Present in Home: W owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a "bed and breakfast" by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. W rents these rooms to vacationers himself and does not employ the services of a real estate agent or broker.
>
> > The rentals by W of these rooms to vacationers qualify for the exception in the statute; therefore, the rental charges paid to W by the vacationers are not subject to the sales tax on accommodations.
>
> Owner Not Present in Home: X owns a home with less than six sleeping rooms and uses the home only for one or two weeks a year for family vacations. She rents the home to vacationers during the rest of the year on a weekly basis (more than 14 days). She rents it herself and does not employ the services of a real estate agent or broker.
>
> > The rentals by X of the home to vacationers do not qualify for the exception in the statute; therefore, the rental charges paid to X by the vacationers are subject to the sales tax on accommodations.

[20] South Carolina Code §12-36-920(A)(2). See SC Revenue Ruling #15-4 and Internal Revenue Code Section 280A(g).
[21] South Carolina Code §12-36-920(A).
[22] SC Regulation 117-307.3.
[23] SC Regulation 117-307.3.

Use of Rental Agency: Y owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a "bed and breakfast" by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. However, Y never rents these rooms to vacationers himself. He employs the services of a real estate agent who rents the remaining sleeping rooms for him.

The rentals by the real estate agent of these rooms to vacationers for Y do not qualify for the exception in the statute; therefore, the rental charges paid to the real estate agent by the vacationers are subject to the sales tax on accommodations with the real estate agent liable for the tax.

Both Rental by Owner and Rental Agency: Z owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a "bed and breakfast" by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. He employs the services of a real estate agent who rents the remaining sleeping rooms for him. However, sometimes Z rents these remaining rooms to vacationers himself.

The rentals by the real estate agent of these rooms to vacationers for Z do not qualify for the exception in the statute; therefore, the rental charges paid to the real estate agent by the vacationers are subject to the sales tax on accommodations with the real estate agent liable for the tax.

The occasional rentals by Z of these rooms to vacationers qualify for the exception in the statute; therefore, the rental charges paid to Z by the vacationers are not subject to the sales tax on accommodations.

Federal Government Agencies[24]

Charges for hotel and motel accommodations to a federal employee on official government business are exempt from sales tax if the accommodations are purchased directly by the federal government.

Therefore, the sales tax on accommodations in not applicable when:

1. The federal government is billed directly by the retailer;

2. The federal employee pays by government check; or,

[24] South Carolina Code §12-36-2120(2), SC Regulation 117-307.6 and South Carolina Revenue Ruling #19-7.

3. The federal employee pays by government credit card[25] and the federal government is billed directly by the credit card company.

   However, charges for hotel and motel accommodations to a federal employee on official government business are subject to the sales tax if the accommodations are purchased by the federal employee, even if the employee is reimbursed for the charges. This includes transactions in which:

   1. The federal employee pays by personal check; or,

   2. The federal employee pays by credit card,[26] is billed directly by the credit card company, and is reimbursed by the federal government.

Note: Charges for hotel and motel accommodations to a state or local government employee on official government business are subject to the sales tax, regardless of whether the state or local government or employee pays the charges.

American Red Cross[27]

The sale to the American Red Cross is exempt from sales tax if:

(1) the American Red Cross is billed directly for the transaction,

(2) the American Red Cross employee uses a credit card that is billed directly to the American Red Cross, or

(3) the American Red Cross employee pays with an American Red Cross check.

The sale to the American Red Cross employee is subject to sales tax when the employee pays for the charge and is reimbursed by the American Red Cross.

Foreign Diplomats

Sales to foreign officials are exempt from the sales tax in accordance with the type of card issued by, and the level of exemption authorized by, the Office of Foreign Mission.[28] Vendors may ask to see additional forms of identification, such as diplomatic I.D., or driver's license.

[25] SC Revenue Ruling #19-7.
[26] SC Revenue Ruling #19-7.
[27] SC Revenue Ruling #19-7.
[28] SC Revenue Ruling #19-7.

Federal Credit Unions[29]

The sale to the federal credit union is exempt from sales tax if:

(1) the federal credit union is billed directly for the transaction;

(2) the federal credit union employee uses a credit card that is billed directly to the federal credit union; or

(3) the federal credit union employee pays with a federal credit union check.

The person being furnished accommodations must be an employee of the federal credit union to come within this exemption. For example, if the federal credit union employee works for an association that represents various federal credit unions and the association pays the charges, then the accommodations are taxable since the association is not a federal credit union.

The sale to the federal credit union employee is subject to sales tax when the employee pays for the charge and is reimbursed by the federal credit union. In addition, sales of accommodations to state credit unions are subject to the tax.

Charitable Children's Hospital

The lease or rental of accommodations to an employee of a charitable hospital predominately serving children exempt from property taxes under South Carolina Code §12-37-220, where care is provided without charge to the patient as provided in South Carolina Code §12-36-2120(47),[30] is exempt from the sales tax on accommodations if:

(1) the qualifying charitable hospital is billed directly for the transaction,

(2) the qualifying charitable hospital employee uses a credit card that is billed directly to the hospital, or

(3) the nonprofit employee pays for the charge with the hospital's check.

Sales or rentals of accommodations to employees of all other nonprofit organizations are subject to accommodations tax regardless of whether the nonprofit organization or the employee pays for the charges.

[29] South Carolina Revenue Ruling #19-7 and SC Attorney General Opinion #S-OAG-59 (1991).
[30] South Carolina Revenue Ruling #19-7.

Marina or Dry Boat Storage Space[31]

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 tax on accommodations. The rentals of dry storage for boats are not subject to the sales tax on accommodations tax.

Reserved Recreational Vehicle Space at a Raceway[32]

The rental of reserved recreational vehicle parking spaces at a motorsports raceway is not subject to the sales tax on accommodations.

Exchange of Accommodations

The Department has held that accommodations provided under exchange agreements are subject to the sales tax on accommodations.[33] However, the General Assembly subsequently enacted an exemption for "any…exchange of accommodations in which the accommodations to be exchanged are the primary consideration."[34]

Therefore, the furnishing of accommodations via an exchange of accommodations is not subject to the sales tax on accommodations if the accommodations to be exchanged is the primary consideration. If the accommodations to be exchanged is not the primary consideration, the furnishing of the accommodations is subject to the sales tax on accommodations, unless otherwise exempt.

C. Additional Guest Charges[35]

A 6% sales tax is imposed upon "additional guest charges" at places that furnish accommodations to transients. In addition, local sales taxes administered and collected by the Department on behalf of local jurisdictions are imposed upon the gross proceeds from the "additional guest charges."

The term "additional guest charge" means an amount which is added to the guest's room charge for the following services for the guest:

- room service;
- laundering and dry cleaning services;

[31] South Carolina Technical Advice Memorandum #90-5.
[32] South Carolina Private Letter Ruling #93-2.
[33] South Carolina Revenue Ruling #98-5.
[34] South Carolina Code §12-36-2120(31).
[35] South Carolina Code §12-36-920(B), SC Regulation 117-307.1, and SC Revenue Ruling #14-5.

- in-room movies;
- telephone service; and,
- rentals of meeting rooms.

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."

As part of Act No.172 of 2014, the General Assembly specifically deleted (effective July 1, 2014) from the definition of “additional guest charges” any charges for amenities, entertainment, special items in promotional tourist packages, and other guest services. Therefore, charges for these services are not subject to the sales tax as an “additional guest charge.” In addition, if separately stated on the bill to a customer and optional, these charges are not subject to the 7% sales tax imposed upon accommodations.

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.

D. Hurricane Insurance[36]

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 Regulation 117-307.1 and 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

[36] See SC Regulation 117-307.7 and South Carolina Revenue Ruling #14-7.

of the home and must forego the vacation because of the mandatory evacuation and subsequent damage caused by a hurricane.

An optional charge for hurricane rental insurance, as described above, 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).

A mandatory charge for hurricane rental insurance, as described above, 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 charges 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. See SC Regulation 117-307.7 and SC Revenue Ruling #14-7.

E. Cancellations of Accommodations

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, the charge for the accommodations retained by the hotel is subject to the tax even though he will not use the sleeping accommodations. 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.

If a person makes reservations with a hotel for sleeping accommodations, but the reservations are canceled by such person or by the hotel, any administrative fee or deposit charged or retained by the hotel as a result of the cancellation is not subject to the tax.

F. Purchases by Persons Furnishing Accommodations[37]

Purchases by hotels, motels, etc. of tangible personal property (e.g., beds, sheets, pillows, televisions, plastic cups, toilet paper, etc.) are retail purchases subject to tax. Hotels, motels, etc. use or consume such items in providing accommodations. They do **not** rent or sell such items to their guests. They rent accommodations.

[37] SC Regulation 117-307.2.

Exhibit A

SC Regulation 117-307.1. Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities

The most current version of the regulation providing specific examples of the application of the sales tax on accommodations and additional guest charges is attached.

The regulation is organized into the following categories of additional charges:

Category	Question Numbers
Telephone Charges	1-4
Maid Service	5-9
In-room Movies	10-12
Meals	13-14
Linens	15
Golf and Other Tourist Packages	16
Bike Rentals	17-18
Newspapers	19-20
Valet Parking	21-23
Meeting Rooms	24-26
Room Refreshment Bar or Refrigerator	27-28
Safes	29-31
Other Charges (Pet Fees, Smoking Fees, Damage Fees, and Late Check-Out Fees)	32-36
Cancellations	37-38

117-307.1. Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities.

The following questions and answers are intended to provide guidance with respect to the provisions of Code Section 12-36-920.

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.

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 6%. 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.

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 6% 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.

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%. The maid service is a service provided with the room and is, therefore, part of the room charge that is subject to the tax at 7%.

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 make it a charge for a separate service. 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 make it a charge for a separate service. 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 not subject to the sales tax. The $50.00 optional maid service is provided over and above the services provided with the unit, but it is not an additional guest charge under the statute. The $50.00 is therefore not subject to the tax.

9. Q. If a rental agency charges $800.00 per week for a condominium unit, plus 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, but it is not an additional guest charge under the statute. The $20.00 is therefore not subject to the tax.

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.

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 6%. 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.

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 and Code Section 12-36-110.)

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 Commission 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 6% 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 6% under Chapter 36 - Code Section 12-36-910 and Code Section 12-36-1110.

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 6% under Chapter 36 - Code Section 12-36-910 and Code Section 12-36-1110.

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,[38] 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.

[38] See SC Revenue Ruling #88-2. This policy has been consistent since 1988 and did not change when the sales and use law under Chapter 35 was recodified in 1991 as Chapter 36 of Title 12 or when Act No. 172 of 2014 was enacted.

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 6% sales tax on the sale of the meal. This calculation must be made on a guest-by-guest basis. In other words, the 7% tax due will be determined for each guest by multiplying 7% by the total charge for the package less the portion forwarded to the golf course for payment of the green fee and the portion forwarded to the restaurant for payment 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 6% sales tax on the sale of the meal.

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 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 not liable for the 6% tax on the other portion of the $100 paid by the guest since it does not represent an additional guest charge for the service of making the golf arrangements that were not used. This amount, however, must be equal to the green fee that the hotel would have had to pay to the golf course in order for the entire charge not to be subject to the 7% tax. In other words, if the hotel would have been required to pay $30 had the guest played golf, then the $30 that would have been, but was not, sent to the golf course is not subject to the sales tax. As such, the hotel would be liable for the 7% tax on $65 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The $30 that would have been, but was not, sent to the golf course is not subject to either the sales tax or the admissions tax.

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. 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 6% 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. To ensure the 7% tax is not circumvented by sending most of the package charge to the golf course and then later having a large portion of it returned to the hotel as "advertising," 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.

<u>Bike Rentals</u>

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. However, the rental charge for the bike is a sale of tangible personal property and is otherwise taxed at 6% 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.

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%.

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%. The newspaper is not an additional guest charge since it is not one of the services specifically listed in the statute as an "additional guest charge." The newspaper that is provided for $2.00 is the sale of tangible personal property; however, sales of newspapers are exempt from the sales tax under Code Section 12-36-2120(8).

Note: Room service is generally considered a service provided to a guest that allows the guest to order food or drink that will be brought to the guest's room. As such, newspapers brought to a guest's room do not fall within the customary definition of room service. Therefore, the $2 charge to the guest for the newspaper is not an additional guest charge.

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 is not an additional guest charge and is not taxed at 6%.

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.

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 6%.

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 6% 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.

Room Refreshment Bar or Refrigerator

27. Q. If a hotel charges $100.00 for a room, and the room contains a refreshment bar so that 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 that 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 6% as a sale of tangible personal property under Code Section 12-36-910 and Code Section 12-36-1110. These charges are not additional guest charges since they are “otherwise taxed” under Chapter 36.

Safes

29. Q. If a hotel charges $100.00 for a room, and that price includes the room and use of the safe in the room, 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 safe is a part of the services offered and provided with the room for the $100.00.

30. 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 safe in the room, what tax rate applies to each of the charges?

A. The $80.00 room charge and the $5.00 charge for the safe are taxed at 7%. The availability of a safe is a part of the services offered and provided with a room. The $5.00 is charged whether or not the guest uses the safe.

31. Q. If a hotel charges $80.00 per day for a room, and the customer is also charged $5.00 if the guest uses the safe in the room, what tax rate applies to each of the charges?

A. The $80.00 room charge is taxed at 7%. The $5.00 charge for actually using the safe is not subject to the tax. The availability of a safe is a part of the services offered and provided with the room; however, the use of the safe is over and above the services customarily provided with the room. In this case, guests expect to pay a charge for use of the safe. Therefore, the $5.00 charge is not a part of the room charge. It is a charge for a service that is not an additional guest charge under the statute, and therefore, not subject to the tax.

Other Charges (Pet Fees, Smoking Fees, Damage Fees. and Late Check-Out Fees)

32. Q. If a hotel charges $100.00 for a room and also charges an additional fee of $20 for having a pet in the room, what tax rate applies to each of the charges?

A. The $100.00 charge and the $20 charge are taxed at 7%. The pet fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for having a pet in the room; therefore, the actual charge for the room is $120.

Note: Federal Regulation concerning Service Dogs - Under Federal Regulation 28 C.F.R. 36.302(c)(8), a place of accommodation (as defined in Federal Regulation 28 C.F.R. 36.104), such as an inn, hotel or motel, “shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets.”

33. Q. If a hotel charges $100.00 for a room and also charges an additional fee of $20 for a room in which the guest is allowed to smoke cigarettes, cigars and other smoking tobacco, what tax rate applies to each of the charges?

A. The $100.00 charge and the $20 charge are taxed at 7%. The smoking room fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for a smoking room; therefore, the actual charge for the room is $120.

34. Q. If a hotel charges $100.00 for a room and also charges an additional fee of $35 if a guest smokes cigarettes, cigars and other tobacco in a non-smoking room, what tax rate applies to each of the charges?

A. The $100.00 charge and the $35 charge are taxed at 7%. The fee for smoking in a non-smoking room is neither a charge for a service nor an additional guest charge. It is a mandatory charge for smoking in a non-smoking room; therefore, the actual charge for the room is $135.

35. Q. If a hotel charges $100.00 for a room and also charges an additional fee of $35 if a guest damages the room, what tax rate applies to each of the charges?

A. The $100.00 charge and the $35 charge are taxed at 7%. The damage fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for causing damage to the room; therefore, the actual charge for the room is $135.

36. Q. If a hotel charges $100.00 for a room and also charges an additional fee of $15 if a guest checks out late (past the specified time for check-out), what tax rate applies to each of the charges?

A. The $100.00 charge and the $15 charge are taxed at 7%. The late check-out is neither a charge for a service nor an additional guest charge. It is a mandatory charge for checking out past the specified time for check-out; therefore, the actual charge for the room is $115.

<u>Cancellations</u>

37. 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 #38 for information concerning when accommodations are canceled but an administrative fee or deposit is charged or retained.

38. 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.

Note: See Question #37 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).

Note: This regulation references tax rates of 7% 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. However, some counties and municipalities impose several types of local option sales and use taxes as well as other local taxes imposed upon the furnishing of accommodations and the sale of prepared meals. Some of these taxes are collected by the Department of Revenue on behalf of the county imposing the tax, and others are collected by the county itself.