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Comments Due by: **May 6, 2015**

SC REVENUE RULING #15-x (DRAFT – 4/15/2015)

SUBJECT: Vacation Rentals of Residence
(Sales Tax on Accommodations)

EFFECTIVE DATE: June 9, 2014

SUPERSEDES: SC Revenue Ruling #04-12

REFERENCES: S.C. Code Section 12-36-920 (Supp. 2014)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2014)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2012)
SC 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 general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION

In Act No. 259 of 2014, the General Assembly enacted legislation affecting sales taxes on accommodations for taxpayers who rent out their residence during the year. Specifically, Code Section 12-36-920(A) was amended to exempt certain rental income from sales tax on accommodations. The purpose of this advisory opinion is to provide guidance regarding this new exemption from sales tax on accommodations for taxpayers who rent out their homes during the year.¹

¹ This document does not address other exemptions from sales tax on accommodations under Code Section 12-36-920 (e.g., places of abode with less than 6 sleeping rooms, rentals for 90 consecutive days, etc.). For additional information on sales tax on accommodations see South Carolina Sales and Use Tax Manual, Chapter 11. The manual can be found under the Law and Policy Section of the Department's website.

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LAW AND DISCUSSION

A. S.C. Code Section 12-36-920

A 7% sales tax is imposed upon the gross proceeds 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 taxpayer residences.

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

Code Section 12-36-920 imposes the sales tax on accommodations. It 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:**

(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).**²

The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of ninety consecutive days are not considered proceeds from transients. . . .

B. Internal Revenue Code Section 280A(g)

I.R.C. § 280A, "Disallowance of Certain Expenses in Connection with Business Use of Home, Rental of Vacation Homes, Etc.," limits the federal income tax deductions a taxpayer may claim

² Emphasis is on the exemption added by 2014 Act No. 259.

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with respect to the rental of a dwelling unit used by the taxpayer during the tax year as a residence.³ I.R.C. § 280A(g), “Special Rule for Certain Rental Use,” provides:

Notwithstanding any other provision of this section or section 183, if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then—

(1) no deduction otherwise allowable under this chapter because of the rental use of such dwelling unit shall be allowed, and

(2) the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under section 61.

C. Gross Proceeds (from Rental Income) Exempt under Code Section 12-36-920(A)(2)

Under Code Section 12-36-920(A)(2), gross proceeds from rental income wholly excluded from a taxpayer’s gross income under I.R.C. § 280A(g) is exempt from sales tax on accommodations. In order to exclude rental income from gross income under I.R.C. § 280A(g), three requirements must be met.⁴

(1) Rental Income Must Be from a Dwelling Unit

The rental income must be from a dwelling unit – *i.e.*, the rental income must be from a house (primary residence or vacation home), apartment, condominium, mobile home, boat, or similar property. Rental income from units or portions of a unit which are used exclusively as a hotel, motel, inn, or similar establishment is not eligible. See I.R.C. § 280A(f)(1) and (2).

(2) Dwelling Unit Must Actually Be Rented Less than 15 Days

The dwelling unit must actually be rented for less than 15 days during the taxable year. A taxpayer may rent out a dwelling unit multiple nonconsecutive days during the tax year (*e.g.* 7 days in April and 5 days in July) or consecutive days (*e.g.* 14 days in July); however, the total number of days the dwelling unit is actually rented out during the tax year must be less than 15 days. I.R.C. § 280A(g).

³ I.R.C. § 280A(a) generally disallows deductions with respect to dwelling units used by the taxpayer during the taxable year as a residence. I.R.C. § 280A(c)(3) provides an exception to the general disallowance rule for items attributable to the rental of dwelling units. Deductions attributable to the rental may still be claimed but not in excess of the amount by which the gross income derived from the rental activity exceeds the deductions otherwise allowable without regard to such rental activity. I.R.C. § 280A(c)(5).

⁴ Taxpayers seeking additional guidance on qualifying under I.R.C. § 280A should consult I.R.S. Publication 527, “Residential Rental Property (Including Rental of Vacation Homes)” or consult their tax advisor.

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(3) Dwelling Unit Must Be Used by the Taxpayer as a Residence

The taxpayer must use the dwelling unit during the taxable year as a residence for purposes of I.R.C. § 280A – *i.e.*, the taxpayer must use the dwelling unit for personal purposes (as defined under I.R.C. § 280A(d)) for a number of days which exceeds the greater of 14 days or 10% of the number of days during such year for which such unit is rented at a fair rental. See I.R.C. § 280A(d).

For example, Taxpayer owns a home in South Carolina that he uses for personal purposes every day during the tax year, except for 10 days in April when he rents out the home at a fair rental price. In this case, Taxpayer must use the home for personal purposes for more than 14 days during the tax year in order to qualify under I.R.C § 280A(d).⁵ Here, Taxpayer used the home for personal purposes for more than 14 days. Accordingly, Taxpayer used the home as a residence during the tax year for purposes of I.R.C. § 280A.

Taxpayers who are exempt from the sales tax on accommodations under Code Section 12-36-920(A)(2) are not required to obtain a retail license or file accommodations tax return(s) with the Department.

Taxpayers who are subject to the sales tax on accommodations under Code Section 12-36-920(A) are required to obtain a retail license and file accommodations tax return(s) with the Department, including Forms ST-388 (State Sales, Use, and Accommodations Tax Return) and ST-3T (State Accommodations Report by County or Municipality). Taxpayers can obtain a retail license (the cost is \$50) online via the South Carolina Business One Stop at www.scbos.sc.gov, or by completing Form SCTC-111.

NOTE: When the owner of a residence employs a rental company to rent out the owner's residence, the rental company (not the owner) is liable for the sales tax on accommodations, *i.e.*, the rental company is the "taxpayer." Rental companies are *not* eligible for the exemption under Code Section 12-36-920(A)(2).

D. Examples

In each of the following examples, assume that the home being rented out qualifies as a "dwelling unit" under I.R.C. § 280A(f) and that the taxpayer uses the home during the taxable year as a residence under I.R.C. § 280A(d).

- (1) Taxpayer Rents Out Residence for Less than 15 Days During the Year – Exempt from Sales Tax on Accommodations. During the calendar year, Taxpayer rents out his home in North Augusta for 10 days in April during the Masters.

⁵Fourteen days is greater than 10% of 10 rental days (1 day).

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The Taxpayer meets the requirements of I.R.C. § 280A(g) and is eligible for the accommodations tax exemption under Code Section 12-36-920(A)(2). Accordingly, Taxpayer is not required to obtain a retail license, and he is not required to file accommodations tax returns with the Department.

- (2) Taxpayer Rents Out Residence for 15 Days or More During the Year – Subject to Sales Tax on Accommodations. During the calendar year, Taxpayer rents out his vacation home in Myrtle Beach for 10 days in June and 8 days in July.

Because the residence has been rented out for 15 days or more during the tax year (here 18 days), Taxpayer does *not* meet the requirements of I.R.C. § 280A(g). Accordingly, Taxpayer is *not* eligible for the accommodations tax exemption under Code Section 12-36-920(A)(2). Unless otherwise exempt, Taxpayer is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department (plus the applicable local tax on accommodations) and file accommodations tax returns with the Department.

- (3) Taxpayer Uses Rental Company to Rent Out Residence During the Year – Subject to Sales Tax on Accommodations. During the calendar year, Taxpayer hires ABC Rental Company to rent out his home in North Augusta for 10 days in April during the Masters.

When the owner of a residence employs a rental company to rent out the owner's residence, the rental company (not the owner) is liable for the sales tax on accommodations. Rental companies are *not* eligible for the exemption under Code Section 12-36-920(A)(2). Thus, when the owner of a residence employs a rental company to rent out the residence the gross proceeds derived from the rental are subject sales tax on accommodations, even if the residence is rented out for less than 15 days during the year. Accordingly, ABC 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 tax on accommodations) and file accommodations tax returns with the Department.