

SC REVENUE RULING #05-6

SUBJECT: Hurricane Insurance - Additional Guest Charge
(Sales Tax)

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

SUPERSEDES: All previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-920 (2000)
SC Regulation 117-307 (Supp. 2003)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2003)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Ruling does not have the force or effect of law, and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Question:

Is an optional charge for "hurricane insurance," as discussed in the Facts, subject to the 5% sales tax as an "additional guest charge" under Code Section 12-36-920(B)?

Conclusion:

It is the opinion of the Department that if sleeping accommodations are furnished, even if not for the full time originally agreed to, then an optional charge for "hurricane insurance," as discussed in the Facts, is subject to the 5% sales tax as an "additional guest charge" under Code Section 12-36-920(B).

However, if the charge for "hurricane insurance" is mandatory, then the charge is subject to the 7% sales tax as a part of the charge for furnishing the sleeping accommodations.

Note: Sleeping accommodation 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 both the sleeping accommodations and the "hurricane 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 both the sleeping accommodations and the optional "hurricane insurance" are subject to the tax (sleeping accommodations – 7%; optional "hurricane insurance" – 5%; mandatory "hurricane insurance – 7%).

Facts:

Persons offering sleeping accommodations to transients will typically provide various amenities and services for an additional fee. While the application of the tax to charges for many such amenities and services are discussed in a SC Regulation 117-307, the issue as to the taxability of an optional charge for so-called "hurricane insurance" has arisen.

For a fee paid to the person offering sleeping accommodations, a guest may obtain "hurricane insurance." This insurance will protect the vacationer against a mandatory evacuation due to a hurricane. Some insurance also offers the vacationer protection resulting from other unforeseen events.

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

Discussion:

Code Section 12-36-920 imposes a sales tax upon accommodations and "additional guest charges" and reads, in part:

(A) A sales tax equal to seven percent is imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration. This tax does not apply where the facilities consist of less than six sleeping rooms, contained in a single building, which is used as the individual's place of abode. The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of ninety continuous days are not considered proceeds from transients. The tax imposed by this subsection (A) does not apply to additional guest charges as defined in subsection (B).

(B) A sales tax of five percent is imposed on additional guest charges at any place where rooms, lodgings, or accommodations are furnished to transients for a consideration, unless otherwise taxed under this chapter. The term 'additional guest charges' includes, but is not limited to:

- (1) room service;
- (2) amenities;
- (3) entertainment;
- (4) special items in promotional tourist packages;
- (5) laundering and dry cleaning services;
- (6) in-room movies;
- (7) telephone charges;
- (8) rentals of meeting rooms; and
- (9) other guest services.

SC Regulation 117-307 states in part:

Code Section 12-36-920 imposes a sales tax upon accommodations and "additional guest charges." The term 'additional guest charge' means an amount which is added to the guest's room charge for a specific amenity or service for the guest."

Therefore, charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for other services provided at the hotel, when over and above the services customarily provided with the room, are taxed at 5% as an "additional guest charge." However, if an "additional guest charge" would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an "additional guest charge."

It should therefore be noted that the determination as to what services, if any, are over and above the services customarily provided with the room must be based on all of the facts and circumstances.

The burden of proof that a charge is an additional guest charge, and not part of the price for the room, rests with the taxpayer. Failure to prove that a particular charge is for a service that is over and above the services customarily provided with the room will subject the charge to the 7% tax rate.

The regulation, through a question and answer format, further provides examples of charges that are subject to the 5% sales tax as an "additional guest charge." Depending on the facts, as established in each question, the regulation concludes that optional charges for telephone calls, maid service, in-room movies, newspapers, valet parking and meeting rooms are subject to the tax as "additional guest charges." (See SC Regulation 117-307 for a more detailed explanation.)

Based on the above, it is the opinion of the Department that an optional charge for "hurricane insurance," as discussed in the Facts, is subject to the 5% sales tax as an "additional guest charge" under Code Section 12-36-920(B).

However, in determining the taxability of a charge for hurricane insurance, it important to review issues with respect to “Cancellations” as established in Questions 29 and 30 of SC Regulation 117-307. The issues addressed in these questions and answers are analogous to certain situations with respect to “hurricane insurance” and these questions and answers read as follows:

29. 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 #30 for information concerning when accommodations are canceled but an administrative fee or deposit is charged or retained.
30. 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. See Anonymous v. South Carolina Department of Revenue, 97-ALJ-17-0263-CC (April 24, 1998) and Anonymous v. South Carolina Department of Revenue, 97-ALJ-17-0379-CC (April 24, 1998).

Note: See Question #29 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).

Based on the above, sleeping accommodation 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 accommodation were not “furnished” and the charges for both the sleeping accommodations and the “hurricane 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 both the sleeping accommodations and the optional “hurricane insurance” are subject to the tax (sleeping accommodations – 7%; optional “hurricane insurance” – 5%).

Note: Based on the principles established in the SC Regulation 117-307, if the charge for “hurricane insurance” is mandatory, then the charge is subject to the 7% sales tax as a part of the charge for furnishing the sleeping accommodations.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

April 17, 2005
Columbia, South Carolina