
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING # 97-22

SUBJECT: Exchange Agreements - Membership Accommodations and Timeshare Resorts
(Sales Tax)

EFFECTIVE DATE: April 1, 1998 for exchanges of accommodations as described in this Revenue Ruling. However, all other methods of furnishing accommodations are taxable for all periods open under the statute. (See Note on Page 13.)

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

REFERENCES: S. C. Code Ann. Section 12-36-920 (Supp. 1996)
S. C. Code Ann. Section 12-36-90 (Supp. 1996)
S. C. Code Ann. Section 12-36-100 (Supp. 1996)
S. C. Code Ann. Section 12-36-60 (Supp. 1996)
S. C. Code Ann. Section 12-36-510(B) (Supp. 1996)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1996)
SC Revenue Procedure #97-8

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

Are accommodations provided under exchange agreements as described in the "Facts" subject to the sales tax on accommodations under Code Section 12-36-920?

Conclusion:

Accommodations provided under exchange agreements as described in the "Facts" are subject to the sales tax on accommodations under Code Section 12-36-920. The basis for the tax is the rental value of the accommodations exchanged as consideration for the accommodations furnished plus any other fees (e.g. reservation fees, upgrade fees) that may be charged to the person to whom the accommodations are furnished. The rental value of the accommodations

exchanged as consideration for the accommodations furnished must be reasonable and based on the books and records of the taxpayers as well as the typical industry rental rate for such accommodations.

For additional guidance, see the examples on pages seven through twelve of this advisory opinion.

Note: See SC Revenue Ruling # 97-3 for information on the application of the sales tax to “additional guest charges.”

Facts:

In addition to the homes, condominiums, and hotels that are available for rent in resort areas in South Carolina, membership accommodations and timeshare units are available.

Membership accommodations allow individuals to purchase several weeks of accommodations that can be used over a specified number of years. For example, a membership accommodations business may offer 10 weeks of vacation for \$5,000 over a period of five years. The member pays the \$5,000 at the time the contract is signed. The member may then reserve accommodations at any one of the resorts owned or managed by the membership accommodations business. The member is not restricted to one unit. *Sales of accommodations through membership plans such as these are and have always been subject to the sales tax on accommodations.*

Vacation time sharing ownership plans allow a person to have an interest in a unit. The person owning the timeshare interest typically has the right to use the unit for a particular week each year. *The purchase of an interest in a timeshare in this manner is the purchase of real estate not subject to the sales tax on accommodations. See Code Section 27-32-10(7).*

Vacation time sharing lease plans allow a person to use a particular unit. The person entering into this type of timeshare plan typically has the right to use the unit for a particular week each year. *The purchase of the type of timeshare plan is not subject to the sales tax on accommodations pursuant to a specific exemption. See Code Sections 27-32-10(8), 27-32-170 and 12-36-2120(31).*

Under both the membership accommodations and timeshare plans, the businesses selling such plans offer exchange agreements to enhance the plan.

Membership accommodations and timeshare resorts enter into exchange agreements with each other. Essentially, the membership company or the timeshare resort will agree to provide accommodations to someone who is not a member or owner in their organization or resort if that person's membership company or timeshare resort will agree to provide accommodations to someone who is a member or owner in their organization or resort. For example, a member or owner in ABC will call ABC to seek reservations at XYZ resort, a resort not under ABC's control. ABC will then make the reservation for one week at XYZ for their member or owner. ABC is now “indebted” to XYZ for one week of accommodations.

In addition, timeshare companies owning several resort complexes may allow and arrange it so an owner in one complex may exchange a week with the owner of a week in another complex owned by the same timeshare company.

Finally, a third party "Exchange Company" will enter into agreements with resorts around the country or world. The resorts agree to maintain their facilities to certain standards and to sign up members on behalf of the Exchange Company. This agreement usually requires that the resort makes it clear to any potential members (purchasers of a membership or timeshare at the resort) that the exchange program available to them at the resort is conducted by the Exchange Company and that the owner of the resort has a separate agreement with the Exchange Company whereby the resort may submit applications for membership in the Exchange Company on behalf of the purchasers.

If a purchaser at the resort signs up for membership in the Exchange Company, the resort will submit the purchaser's membership fee at the time the application is submitted. The member is then responsible for submitting a renewal fee each year in order to maintain his membership.

Under exchange programs conducted by these Exchange Companies, the member will receive a book from the Exchange Company outlining the rules and listing the available exchange accommodations by location (SC, NC, GA, FL, etc). In order to exchange accommodations, the member will:

1. Deposit his vacation time (the membership, timeshare, condominium, home, he owns or leases) into a pool or "bank" of all accommodations available to members.
2. Request vacation time at a specific resort, usually designating several resorts as first choice, second choice, etc. A small fee is required to be paid via a credit card when the vacation time is requested.

If the member's selection is available, the Exchange Company will confirm the time is available. If the selection is not available, the Exchange Company will conduct a computer search of the pool or bank for the member's desired resort area and time and notify the member when a match is made.

The question has arisen as to whether accommodations provided under these exchange agreements are subject to the sales tax on accommodations.

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 on the same premises, 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) (emphasis added).

(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.

Therefore, the “gross proceeds” derived from charges for rooms, lodgings and accommodations are taxed at 7%. Certain other charges for other services provided at any place furnishing accommodations are taxed at 5% as an "additional guest charge." For information on the tax on additional guest charges, see SC Revenue Ruling #97-3.

“Gross proceeds,” as used in the statute, is defined in Code Section 12-36-90 in part as:

... the value proceeding or accruing from the sale, lease, or rental of tangible personal property (emphasis added).

“Sale” is defined in Code Section 12-36-100 in part as:

... any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

(2) a rental, lease, or other form of agreement; ... (emphasis added).

“Tangible personal property” is defined in Code Section 12-36-60 to include the “furnishing of accommodations.”

The term “consideration,” while not defined in the sales and use tax code, is defined in American Heritage Dictionary, Second Edition, as, “[s]omething promised, given, or done that has the effect of making an agreement a legally enforceable contract.” Furthermore, the following quote from 68 Am. Jur. 2d, Sales and Use Taxes, Section 67 provides additional guidance:

The sales tax statutes normally define "sale" in terms of a transfer "for a consideration" or "for a valuable consideration," and thus a consideration is essential to render a sale taxable under the statute. Accordingly, it is held that a mere transfer of possession of property is not within the Sales Tax Act definition of "sale" unless it is a transfer for a consideration.

The required consideration is not limited to a money consideration, and some statutes are specific about this, stating that the consideration may be a price or rental, in money or by exchange or barter, or by money or service, or other thing of value. Thus, when a sale is made of tangible personal property for cash, for cash and other property, or for other property alone, payment of the sales tax is required.

Based on the above, the furnishing of accommodations, including exchanges and barter, for a consideration is subject to the 7% sales tax on accommodations. (*See again the definition of the term “sale” which includes an “exchange” of tangible personal property which by definition includes accommodations.*) Therefore, accommodations provided under the exchange agreements discussed in the facts are subject to the sales tax on accommodations.

In addition, the tax on accommodations is due the month in which the accommodations are furnished, regardless of when the consideration for such accommodations is paid. For example, if a person pays in February for a week at a resort during July, then the sales tax on such accommodations are remitted with the July sales tax return since these accommodations were “furnished” in July. Also, if a person pays a membership accommodations business \$5,000 for 10 weeks of vacation to be used over a period of five years, then the sales tax is due as each week is used. The membership accommodations business should prorate the \$5,000 over the 10 weeks. If each week is of equal value, the sales tax would be remitted based on \$500 per week as each week is furnished.

Finally, it should be noted that the taxation of exchanges of accommodations applies to exchanges between individuals as well as the exchanges between retailers such as those who own or manage membership accommodations and timeshare developments and resorts. Code Section 12-36-510 establishes who must obtain a retail license before engaging in selling tangible personal property (including accommodations). Subsection (B) of that section provides certain exceptions and states in part:

(B) A retail license is not required of:

* * * *

(3) persons furnishing accommodations to transients for one week or less in any calendar quarter; however, accommodations taxes must be remitted annually, on forms prescribed

by the commission, by April 15 of the following year. This item (3) of this subsection does not apply to rental agencies or persons having more than one rental unit; ...

Therefore, while some persons are not required to obtain a retail license, all persons (individuals, partnerships, LLC's, corporations, etc.) must remit the sales tax on accommodations with respect to all accommodations furnished for cash, property, other accommodations, or any other consideration. (See Code Section 12-36-30 for the definition of "person" which includes individuals, partnerships, LLC's, corporations, etc.)

The following examples should provide some guidance in this matter. Please note that these examples have been simplified in order to best explain the application of the tax. Some exchange agreements and programs are complex; however, the principles for applying the tax remain the same as set forth in these examples. Finally, please note that the names used in the following examples are fictitious.

Membership Accommodations:

Example #1 - Exchange Between a South Carolina Membership Resort and an Out-of-State Membership Resort

A joins a membership accommodations plan and pays \$2,000 for four weeks of accommodations over four years at the various resorts of SC Resorts Membership Company ("SC Resorts"). During the first three years, A uses one week of accommodations a year at various South Carolina resorts of SC Resorts. As such, SC Resorts has remitted sales tax on \$500 worth of accommodations furnished to A during each of the first three years since it considers each week furnished to be of equal value. In the fourth year, A decides to vacation in Florida at a resort not owned or managed by SC Resorts. A contacts SC Resorts who makes reservations for A at Florida Resorts Membership Company ("Florida Resorts"). (SC Resorts and Florida Resorts have an exchange agreement with each other.) A vacations at Florida Resorts for the last week available under his contract. Florida Resorts allows A to vacation at its resort since an exchange agreement exists between SC Resorts and Florida Resorts. SC Resorts is now obligated to provide accommodations to a member of Florida Resorts.

As such, SC Resorts is not obligated to remit the sales tax with respect to the accommodations furnished A since the accommodations were not furnished by SC Resorts and were furnished in Florida. However, SC Resorts will be required to remit sales tax on the accommodations furnished to the member of Florida Resorts in the month and year such accommodations are actually furnished since the previous exchange and the obligation to reciprocate under the exchange agreement constitutes a "sale" under the law. The basis for the sales tax on the accommodations furnished to the member of Florida Resorts (when furnished) would be the weekly rental value of the accommodations exchanged as consideration for the accommodations furnished. If the accommodations exchanged are of equal value, this should be \$500.

Example #2 - Exchange Between Two South Carolina Membership Resorts

A joins a membership accommodations plan and pays \$2,000 for four weeks of accommodations over four years at the various resorts of SC Resorts Membership Company (“SC Resorts”). During the first three years, A uses one week of accommodations a year at various South Carolina resorts of SC Resorts. As such, SC Resorts has remitted sales tax on \$500 worth of accommodations furnished to A during each of the first three years since it considers each week furnished to be of equal value. In the fourth year, A decides to vacation at a resort not owned or managed by SC Resorts but located in South Carolina. A contacts SC Resorts who makes reservations for A at Palmetto Resorts Membership Company (“Palmetto Resorts”). (SC Resorts and Palmetto Resorts have an exchange agreement with each other.) A vacations at Palmetto Resorts for the last week available under his contract. Palmetto Resorts allows A to vacation at its resort since an exchange agreement exists between SC Resorts and Palmetto Resorts. SC Resorts is now obligated to provide accommodations to a member of Palmetto Resorts.

As such, Palmetto Resorts is obligated to remit the sales tax with respect to the accommodations furnished A since the accommodations were furnished by Palmetto Resorts in South Carolina and the obligation to exchange under the exchange agreement constitutes a “sale” under the law. SC Resorts will be required to remit sales tax on the accommodations furnished to the member of Palmetto Resorts in the month and year such accommodations are actually furnished since the previous exchange and the obligation to reciprocate under the exchange agreement constitutes a “sale” under the law. The basis for the sales tax on the accommodations furnished by Palmetto Resorts and SC Resorts (when furnished) would be the weekly rental value of the accommodations exchanged as consideration for the accommodations furnished. If the accommodations exchanged are of equal value, this should be \$500.

Timeshare Resorts:

Example #1 - Exchange Between South Carolina Timeshare Resort and an Out-of-State Timeshare Resort

A purchases a timeshare week for \$4,000 at a condominium/timeshare complex of SC Timeshares Company (“SC Timeshares”). This allows A to stay in Unit 312 during the first week in July every year as long as he owns his timeshare and remits his annual regime fees. Under South Carolina law, this purchase by A is a purchase of realty since it is the purchase of a vacation time sharing ownership plan. Therefore, the \$4,000 is not subject to the sales tax on accommodations.

In addition, A has the right to exchange his week for another week at another complex or resort that has entered into an exchange agreement with SC Timeshares. For one year, 199X, A decides to vacation in Florida at a resort not owned or managed by SC Timeshares. A contacts SC Timeshares who makes reservations for A at Florida Timeshare Company (“Florida Timeshares”). (SC Timeshares and Florida Timeshares have an exchange agreement with each other.) A vacations at Florida Timeshares for one week in July, 199X. Florida Timeshares allows A to vacation at its resort since an exchange agreement exists between SC Timeshares and Florida Timeshares. SC Timeshares is now obligated to provide accommodations to a timeshare owner of Florida Timeshares.

As such, SC Timeshares is not obligated to remit the sales tax with respect to the accommodations furnished A since the accommodations were not furnished by SC Timeshares and were furnished in Florida. However, SC Timeshares will be required to remit sales tax on the accommodations furnished to the timeshare owner of Florida Timeshares in the month and year such accommodations are actually furnished since the exchange is for accommodations and does not constitute realty under the law and the previous exchange and the obligation to reciprocate under the exchange agreement constitutes a “sale” under the law. The basis for the sales tax on the accommodations furnished to the timeshare owner of Florida Timeshares (when furnished) by SC Timeshares would be the weekly rental value of the accommodations exchanged as consideration for the accommodations furnished.

Example #2 - Exchange Between Two South Carolina Timeshare Resorts

A purchases a timeshare week for \$4,000 at a condominium/timeshare complex of SC Timeshares Company (“SC Timeshares”). This allows A to stay in Unit 312 during the first week in July every year as long as he owns his timeshare and remits his annual regime fees. Under South Carolina law, this purchase by A is a purchase of realty since it is the purchase of a vacation time sharing ownership plan. Therefore, the \$4,000 is not subject to the sales tax on accommodations.

In addition, A has the right to exchange his week for another week at another complex or resort that has entered into an exchange agreement with SC Timeshares. For one year, 199X, A decides to vacation at a resort not owned or managed by SC Timeshares but located in South Carolina. A contacts SC Timeshares who makes reservations for A at Palmetto Timeshare Company (“Palmetto Timeshares”). (SC Timeshares and Palmetto Timeshares have an exchange agreement with each other.) A vacations at Palmetto Timeshares for one week in July, 199X. Palmetto Timeshares allows A to vacation at its resort since an exchange agreement exists between SC Timeshares and Palmetto Timeshares. SC Timeshares is now obligated to provide accommodations to a timeshare owner of Palmetto Timeshares.

As such, Palmetto Timeshare is obligated to remit the sales tax with respect to the accommodations furnished A since the accommodations were furnished by Palmetto Timeshares in South Carolina, the exchange is for accommodations and does not constitute realty under the law, and the obligation to exchange under the exchange agreement constitutes a “sale” under the law. SC Timeshares will be required to remit sales tax on the accommodations furnished to the member of Palmetto Timeshares in the month and year such accommodations are actually furnished since the exchange is for accommodations and does not constitute realty under the law and the previous exchange and the obligation to reciprocate under the exchange agreement constitutes a “sale” under the law. The basis for the sales tax on the accommodations furnished to the timeshare owners by Palmetto Timeshares and SC Timeshares (when furnished) would be the weekly rental value of the accommodations exchanged as consideration for the accommodations furnished.

Example #3 - Exchange Within the Same Timeshare Company

A purchases a timeshare week for \$4,000 at a condominium/timeshare complex of SC Timeshares Company (“SC Timeshares”). This allows A to stay in Unit 312 in a Myrtle Beach complex during the first week in July every year as long as he owns his timeshare and remits his annual regime fees. Under South Carolina law, this purchase by A is a purchase of realty since it is the purchase of a vacation time sharing ownership plan. Therefore, the \$4,000 is not subject to the sales tax on accommodations.

However, as part of the purchase, A now has the right to exchange his week for another week at another complex or resort owned by SC Timeshares or at another complex or resort not owned or managed by SC Timeshares but that has entered into an exchange agreement with SC Timeshares. For one year, 199X, A decides to vacation at a another resort owned or managed by SC Timeshares and located in Charleston, South Carolina. A contacts SC Timeshares who makes reservations for A at the Charleston complex. A vacations at the Charleston complex for one week in July, 199X. SC Timeshares allows A to vacation at its Charleston complex since A, in the exchange agreement, agrees to allow the owner of the Charleston unit, B, to stay at his unit of the Myrtle Beach complex. As such, SC Timeshare is obligated to remit the sales tax with respect to the accommodations furnished A since the accommodations were furnished by SC Timeshares in South Carolina, the exchange is for accommodations and does not constitute realty under the law, and the obligation to exchange under the exchange agreement constitutes a “sale” under the law. SC Timeshares will be required to remit sales tax on the accommodations furnished to B in the month and year such accommodations are actually furnished since the exchange is for accommodations and does not constitute realty under the law and the obligation to reciprocate under the exchange agreement constitutes a “sale” under the law. The basis for the sales tax on the accommodations furnished by SC Timeshares to A and B (when furnished) would be the weekly rental value of the accommodations exchanged as consideration for the accommodations furnished.

Exchanges through an Exchange Company:

A purchases a timeshare week for \$4,000 at a condominium/timeshare complex of SC Timeshares Company (“SC Timeshares”). This allows A to stay in Unit 312 in a Myrtle Beach complex during the first week in July every year as long as he owns his timeshare and remits his annual regime fees. Under South Carolina law, this purchase by A is a purchase of realty since it is the purchase of a vacation time sharing ownership plan. Therefore, the \$4,000 is not subject to the sales tax on accommodations.

SC Timeshares has entered into agreement with XYZ Exchange Company (“XYZ Exchange”). Under this agreement, SC Timeshares agrees to maintain their facilities to certain standards and to sign up members on behalf of the XYZ Exchange. This agreement requires SC Timeshares to make it clear to any potential members (purchasers of a timeshare unit at SC Timeshares) that the exchange program available to them is conducted by XYZ Exchange and that SC Timeshares has a separate agreement with XYZ Exchange whereby SC Timeshares submits applications for membership in XYZ Exchange on behalf of the purchaser of the timeshare unit at SC Timeshares.

If a purchaser signs up for membership in XYZ Exchange, SC Timeshares will submit the one year membership fee received from A to XYZ Exchange on behalf of A. A is then responsible for submitting a renewal fee each year thereafter.

A can now exchange his unit for any unit in the pool or bank of accommodations “deposited” by other members. A decides to vacation in Hilton Head, SC and:

1. Deposits a week of his vacation time (his timeshare unit and week at SC Timeshares) into a pool or “bank” of all accommodations available to members, and
2. Requests a week of vacation time at a specific resort on Hilton Head Island. A small fee is required to be paid by A via a credit card when the vacation time is requested.

A’s selection is available and XYZ Exchange confirms the reservation.

As such, XYZ Exchange is obligated to remit the sales tax¹ with respect to the accommodations furnished A since the accommodations were furnished by XYZ Exchange in South Carolina (Hilton Head Island), the exchange is for accommodations and does not constitute realty under the law, and the obligation to exchange under the exchange agreement constitutes a “sale” under the law. XYZ Exchange will also be required to remit sales tax on the accommodations furnished to the person using A’s timeshare unit at SC Timeshares in Myrtle Beach, SC in the month and year such accommodations are actually furnished. The basis for the sales tax on each accommodations furnished in South Carolina would be the weekly rental value of the accommodations exchanged as consideration for the accommodations furnished *plus the small reservation fee paid* by the member at the time the reservation request was made .

Please Note the Following:

(1) Application to All Exchanges: The principles established above also apply to exchanges between a timeshare resort and a membership resort. In other words, the same principles apply if a membership resort exchanges accommodations with a timeshare resort as well as exchanges between two membership resorts or two timeshare resorts as described in the examples. They also apply to all exchanges through an Exchange Company in which accommodations are furnished in South Carolina, whether the member of the Exchange Company owns vacation time at a timeshare resort or a membership resort, or owns a condominium or home, that he can place into the exchange pool or bank.

Finally, while they are not the subject of this revenue ruling, it should be noted that exchanges of accommodations between two individuals are also subject to the sales tax on accommodations when such accommodations are furnished in South Carolina. In other words, if Mr. Smith allows Mr. Jones to stay one week at his home on the beach in Garden City, SC if Mr. Jones allows him to stay one week at his home in Florida, then Mr. Smith is

¹All real estate agents, brokers and listing services furnishing accommodations to transients are retailers; and therefore, are required to be licensed and must remit the sales tax on such accommodations. The exchange company in this example is no different than the real estate companies along the coast that rent for money condominiums and homes owned by others.

liable for the sales tax on accommodations for the accommodations furnished in South Carolina to Mr. Jones. The basis for the sales tax on the accommodations furnished in South Carolina would be the weekly rental value of the accommodations furnished.

(2) **Vacation Time Sharing Lease Plans:** The principles above also apply to exchanges involving “vacation time sharing lease plans” defined in Code Section 27-32-10(8). While the purchase of a “vacation time sharing lease plan” is specifically exempted from the sales tax under Code Sections 26-32-170 and 12-36-2120(31), the exchange of accommodations at a unit under such a plan for accommodations at another unit under a vacation time sharing ownership plan, a vacation time sharing lease plan, or a membership plan is subject to the sales tax on accommodations since such an exchange is not the sale of a “vacation time sharing lease plan.” Such an exchange is the sale of accommodations for a specific time period. It is no different than the sale by a vacation time sharing lease plan resort of one week of accommodations for a specific unit because the person who typically leases that unit for that week could not use it. Neither the exchange nor the sale of such accommodations at a vacation time sharing lease plan resort qualify for the exemptions under Code Sections 26-32-170 and 12-36-2120(31). Only the sale of the full plan qualifies for the exemptions.

(3) **Effective Date of this Document:** As noted on page one of this document, the effective date of this advisory opinion is April 1, 1998. The effective date only applies to exchanges of accommodations. It does not apply to the purchase of accommodations through membership plans or any other method. For example, purchases of accommodations through membership plans are taxable for all periods open under the statute. It is no different than making advanced reservations at a hotel. The tax on such accommodations is due the month in which the accommodations are furnished, regardless of when the consideration for such accommodations is paid.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

Columbia, South Carolina
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