State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: http://www.sctax.org

SC REVENUE RULING #09-2

SUBJECT: Accommodations Furnished to Government Employees, Foreign Diplomats, and Nonprofit Organization Employees (Sales Tax)

EFFECTIVE DATE: November 30, 2008

SUPERSEDES: SC Revenue Ruling #04-1

REFERENCES: S. C. Code Ann. Section 12-36-920 (Supp. 2008)
S. C. Code Ann. Section 12-36-2120 (Supp. 2008)
S. C. Code Ann. Section 12-36-1110 (Supp. 2008)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2008)
S.C. Code Ann. Section 1-23-10(4) (2008)
SC Revenue Procedure #05-2

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Code Section 12-36-920 provides for a 7% sales tax on accommodations (a 5% State sales tax and a 2% accommodations tax) and a 6% State sales tax on additional guest charges. The statute reads:

> (A) A sales tax equal to seven percent is imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration. This tax does not apply where the facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the individuals 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 [six] 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.

Code Section 12-36-2120 provides certain exemptions from the sales tax on accommodations and additional guest charges. Exemptions are available for:

1. The federal government (including federally chartered credit unions and the American Red Cross). Code Section 12-36-2120(2) exempts tangible personal property sold to the federal government.

2. Foreign diplomats. Code Section 12-36-2120(1) exempts sales of tangible personal property which the State is prohibited from taxing by the Constitution or laws of the United States of America or this State.

3. Nonprofit organizations. Code Section 12-36-2120(41) exempts items sold by organizations under Section 12-37-220A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24), if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual. Code Section 12-36-2120(47) exempts tangible personal property sold to charitable hospitals predominately serving children exempt under Section 12-37-220, where care is provided without charge to the patient.

The purpose of this advisory opinion is to assist the hospitality industry in determining the proper taxation of accommodations furnished to employees of the government, federal credit unions, nonprofit organizations, the American Red Cross, and foreign diplomats. Note: This document addresses the 7% sales tax on accommodations and any local option sales taxes collected by the Department; it does not address any local taxes on accommodations that may be due and collected directly by a county.

1. Federal Government Employee. The taxability of accommodations furnished to a federal government employee depends upon whether the sale is between the retailer and the employee or between the retailer and the federal government. SC Revenue Ruling #09-1 – Federal Employee Credit Cards for more detailed information.

   a. Taxable Accommodations – Sales Between Retailer and Federal Employee. Accommodations furnished to a federal government employee conducting official business are subject to sales tax when the employee pays for the charge and is reimbursed by the federal government.

b. Exempt Accommodations – Sales Between Retailer and Federal Government. Accommodations furnished to a federal government employee conducting official business are exempt from sales tax if: (1) the federal government is billed directly, (2) the federal employee uses a credit card that is billed directly to the federal government (see discussion below), or (3) the federal employee pays with a federal government check.

The following briefly explains the applicability of sales tax on accommodations purchased by a federal employee with a US Government travel credit card and integrated credit card.

Travel Charge Card. This card is used for official government travel and travel related expenses. The taxability of the purchase depends on whether the employee or the federal government is billed as described below:

a. Individually Billed Taxable Sale. Travel charge cards that are billed to the employee are subject to sales tax. The partial account numbers for these travel charge cards are:

Visa #4486 and #4614 and the sixth digit is 1, 2, 3 or 4;
Mastercard #5565 and #5568 and the sixth digit is 1, 2, 3 or 4.

b. Centrally Billed Exempt Sale. Travel charge cards that are billed directly to the federal government are not subject to sales tax. The partial account numbers for these charge cards are:

Visa #4486 and #4614 and the sixth digit is 0,6,7,8 or 9;
Mastercard #5565 and #5568 and the sixth digit is 0,6,7,8 or 9.

Integrated Charge Card. The integrated charge card combines two or more business lines (*i.e.,* travel, fleet, and/or purchase) and offers a single card for all purchases. Currently, this card is used only by the Department of the Interior. The Department of Interior's Mastercard begins with #5565 or #5568. If the 6th digit is 6, 7, 8, or 9, then the accommodations furnished are centrally billed to the federal government and are exempt from sales and use tax; if the 6th digit is 1, 2, 3, or 4, then the accommodations furnished are directly billed to the employee are a subject to sales tax.

2. State or Local Government Employee. Sales of accommodations to any state or local government employee (including an employee of a school district, college, etc.) are subject to sales tax regardless of whether the state or local government or the employee pays for the charges.

3. Federal Credit Union Employee. The taxability of accommodations furnished to a federal credit union employee depends upon whether the sale is between the retailer and the employee or between the retailer and the federal credit union[1].

[1] South Carolina Attorney General Opinion #S-OAG-59 concluded that federally chartered credit unions are instrumentalities of the federal government.

a. Taxable Accommodations – Sale Between Retailer and Federal Employee. Accommodations furnished to a federal credit union employee are subject to sales tax when the employee pays for the charge and is reimbursed by the federal credit union.

b. Exempt Accommodations – Sale Between Retailer and Federal Credit Union. Accommodations furnished to a federal credit union employee are exempt from sales tax if: (1) the federal credit union is billed directly, (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. Note: This exemption does not apply to a federal credit union employee who works for an association that represents various federal credit unions if the association pays the charges since the association is not a federal credit union.

4. Foreign Diplomats. Accommodations furnished to foreign diplomats are exempt from sales tax in accordance with the type of card issued by, and the level of exemption authorized by, the Office of Foreign Mission. Retailers furnishing accommodations to foreign officials are required to record the protocol identification number from the tax exemption card on the invoice, bill of sale, cash register tape, or other written evidence of the transaction. See SC Information Letter #03-25 – Foreign Diplomats for more detailed information.

   Exemption Cards Issued by the Office of Foreign Missions. The two types of tax exemption cards are:

   1. Personal Tax Exemption Card. This card is used for exemption from state and local sales, restaurant, lodging, and similar taxes normally charged to a customer, and may be used only for the personal use of the bearer whose picture appears on the front of the card. Vendors may ask to see additional forms of identification, such as diplomatic I.D., or driver's license.

   2. Mission Tax Exemption Card. This card is issued to embassies, consulates, and international organizations for official purchases only and for the sole benefit of the mission identified on the face of the card. All purchases must be made in the name of the mission and paid for by mission check or credit card (not cash or personal check). Personal purchases are prohibited.

   Each tax exemption card contains the individual's name, photograph, mission employed by, an expiration date, and a protocol identification number for identification purposes. Each card will have one of two different levels of sales and use tax exemption and is indicated by the color of the card and the written explanation in the colored box. A card with a blue strip exempts the bearer from all state and local taxes on all personal and official purchases. A card with a yellow stripe allows a full tax exemption on all personal and official purchases except restricted categories or amounts identified on the face of the card. The tax exemption card, however, is not valid for exemption from taxes on telephones, other utilities, or gasoline purchases.

5. Nonprofit Organization. Only accommodations furnished to an employee of a charitable hospital predominately serving children exempt under Section 12-37-220, where care is provided without charge to the patient as provided in Code Section 12-36-2120(47) are exempt from sales tax if: (1) the qualifying hospital is billed directly for the transaction, (2) the qualifying hospital employee uses a credit card that is billed directly to the hospital, or (3) the nonprofit employee pays with a hospital check.

   Sales of accommodations to employees of all other nonprofit organizations are subject to sales tax regardless of whether the nonprofit organization or the employee pays for the charges. See SC Revenue Procedure #03-6 – Exemption Certificates – Sales by Certain Nonprofit Organizations for more detailed information.

6. American Red Cross Employee. The taxability of accommodations furnished to an American Red Cross[2] employee depends upon whether the sale is between the retailer and the employee or between the retailer and the American Red Cross.

   a. Taxable Accommodations - Accommodations furnished to an American Red Cross employee is subject to sales tax when the employee pays for the charge and is reimbursed by the American Red Cross.

   b. Exempt Accommodations - Accommodations furnished to an American Red Cross employee are exempt from sales tax if: (1) the American Red Cross is billed directly, (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.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

February 23, 2009
Columbia, South Carolina

[2] The American Red Cross is an instrumentality of the United States government. See *Department of Employment et.al. v. United States,* 385 U.S. 355 (1966).