GENERAL TYPES OF TAXABLE TRANSCTIONS
TRANSIENT RENTALS

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GENERAL TYPES OF TAXABLE TRANSACTIONS
TRANSIENT RENTALS

INTRODUCTION

This section deals with the audit methods and procedures applicable to sales and use tax audits conducted on hotels, motels and other lodging places.

GENERAL OVERVIEW

A transaction does not necessarily have to involve the sale of tangible personal property to be deemed or classified as a retail sale. There are some facilities and services that meet the definition of "retail sale" or "sale at retail". This tax does not apply to rooms, lodgings or accommodations which are rented to an individual for a continuous period of 30 days or more. Additionally, the word "individual" has been interpreted to include organizations.

KRS 139.100(2)(a) (Effective until July 1, 2004)

(2) "Retail sale" or "sale at retail" shall include but shall not be limited to the following:
   (a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply, however, to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to an individual;

KRS 139.200(2)(a)

139.200 Imposition of sales tax. (Effective July 1, 2004)

A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

(2) The furnishing of the following:
   (a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to a person;

The statutes indicated above form the basis for taxing transient rentals. Specifically, the tax is levied on the rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration.
One of the keys to taxing these rentals is that they are for less than 30 days and that the rental facility regularly holds itself out to transients. However, tax does not apply if the lease is for a period of 30 days or longer. In the absence of a lease, tax does apply during the first 30 days. Additionally, once the 30 days chain is broken, the sequence starts over.

Sales tax does apply to weekly or monthly apartment rentals of less than 30 days provided the rental facility regularly holds itself out to transients as providing short-term accommodations as do hotels, motels, etc. Some apartment operators regularly furnish apartments on short-term lease or rental arrangements. Such arrangements fall within the definition of “retail sale” as set forth in KRS 139.100(2)(a) – until 7/1/04 and KRS 139.200(2)(a), effective 7/1/04 – and are subject to the 6 percent Kentucky sales tax.

**TAXABLE/NONTAXABLE SITUATIONS – SALES**

**Cabins Located at Campgrounds**

These are structures that look like a small log cabin. The cabin is not on a permanent foundation and can be moved around the campground. The cabins are available in one or two-room models.

The one room cabin is equipped with a double bed and a bunk bed. The two-room model has a double bed in the back room and two sets of bunk beds in the front room. Each bed has a mattress, but linens and pillows must be furnished by the occupant. Some cabins have heating and air conditioning. The cabins at the campground have electrical outlets and electric lights. The cabins do not have plumbing; however, some locations have water faucets located outside. The bathrooms and showers are located at a central building elsewhere on the campground.

It is obvious that these facilities satisfy the definition of lodging in that they provide a (1) a place to live and (2) sleeping accommodations and are rented.

**Company/Organization**

If a company or organization rents the room for a period of 30 days or longer, tax no longer applies. In other words, a continuous contractual arrangement to provide specific rooms or a block of rooms for a corporation’s employees where the corporation remits payment for the continuous rental directly to the hotel is not subject to the sales tax. Also, the fact that the rooms are not occupied by the same individuals or that on rare occasion the same rooms will not be utilized does not change the exemption. Particular rooms being rented under such circumstances cannot be traded, switched, or exchanged for other rooms in the same hotel/motel. If such switching takes place, sales tax must be imposed on the room rentals from the first day of occupancy.

Circumstances which would not qualify for the continuous day exclusion include but are not limited to the following:
Circumstance #1 – The periodic rental of rooms by a corporation’s employees where the billing for the accommodation is rendered to the corporation. The inference here is that employees on their own initiative secured lodging at a given motel with the corporation being billed directly. Direct billing does not eliminate the 30-day requirement.

Circumstance #2 – The rental of rooms to a corporation or its employee where a contract or agreement provides for a guaranteed room rate. The connotation is that a contract or agreement providing for a guaranteed room rate does not affect the 30-day requirement.

Circumstance #3 – An agreement providing for the guarantee of any rooms on an as needed basis. The mere fact of the existence of an agreement providing for a guarantee of rooms on an as needed basis does not suffice. The room(s) must have been paid for and the individual, etc. is still charged whether or not the room(s) is occupied.

Once the 30-day period is met the hotel/motel may request a refund from the Department of Revenue after the tax is refunded or credited to the individual by the hotel/motel.

Camping Fees

Camping fees charged by campground owners or operators for persons to park their camper trailers, recreational vehicles or pitch tents are not subject to sales tax. Owners or operators of campgrounds are renting real property and the receipts derived from this activity are not taxable receipts under KRS 139.100(2)(a) or KRS 139.200(2)(a).

TAXABLE/NONTAXABLE PURCHASES

Furniture, bedding and similar type furnishings located both within the rooms for rent and in the lobby and office areas are taxable purchases.

Some further examples of tangible personal property that are subject to tax…

- Advertising Material
- Aluminum Wrap
- Appliances
- Bath Mats
- Bibles
- Carpets
- Cleaning Equipment & Supplies
- Draperies
- Glassware
- Guest Checks
- Kitchen Cookware
- Lawn Equipment
- Linens
- Menus
- Pictures/Paintings
- Plastic Wrap
- Silverware
- Stationery
- Table Linens
- Tableware
- Television Sets
- Towels
In auditing situations when the hotel/motel operator has issued a resale certificate for furnishings within a room for rent, the auditor is required to make an audit adjustment taxing these purchases. The taxpayer may state that since the room charges are taxable, the furniture should be considered for resale. The Department of Revenue’s position, which is substantiated by the court case Kentucky Bd. of Tax Appeals v. Brown Hotel Co., 528 S.W.2d 715 (Ky. 1975), is that certain tangible personal property purchased by a hotel/motel for use in operating this business and not for direct resale to the customer is subject to tax at the time of sale to the hotel/motel. Although guests may be incidental beneficiaries, the other prime recipient of any benefits arising from its use is the hotel.

Purchases of items which are consumed directly by the occupant in a single occupancy of a room or accommodation and deemed to be part of the room charge are exempt. Purchases of such items can be purchased by the hotel/motel exempt from tax by issuing a resale certificate. This type of purchase is considered part of the rental charge for the room and includes disposable paper, soap, facial tissue, and shoeshine cloths.

There may be instances when bars and/or restaurants that are located within hotels/motels may allow a person renting a room to participate in a "free" continental breakfast, breakfast bar, drinks in the bar or some combination or variation thereof.

Food included as a complimentary amenity is not subject to sales or use tax as the food will have been originally purchased as "exempt" food items free from sales tax and no use tax is imposed on the cost of "exempt" food when consumed by patrons for which there is no specific charge. Other items such as plates, napkins and cutlery are taxable, whether or not these items are reusable.

Items such as liquor, wine, beer and soft drinks are subject to the sales tax upon their sale to patrons. Therefore, in the circumstance where there is no charge to the patron, these items would be subject to use tax payable by the restaurant or bar upon their consumption as they do not qualify for the food exemption and there is no other exemption applicable to these items.

**RESTAURANTS AND COCKTAIL LOUNGES, GIFT SHOPS, VENDING MACHINES, MOVIES AND PHONE CALLS**

The taxpayer will normally maintain separate records for the rooming operation, the restaurant/cocktail lounge and gift shop. In some locations, the restaurant and lounge operations may be leased to a separate business enterprise. Vending machines are common at hotels and motels and the ownership of the machines and servicing arrangements vary between locations.

When auditing/reviewing lodging facilities where restaurants and/or cocktail lounges are available, it is necessary to determine if the restaurant and/or lounge is leased by a separate business or operated by the taxpayer. As indicated earlier it is normal for restaurants and/or lounges operated by the hotel/motel, to maintain separate records for each type of business.
Another type of business which may be located at a hotel/motel would be a gift shop. The gift shop may be leased by another business or operated by the hotel/motel. When the hotel is operating the gift shop, the hotel is the retailer.

As far as vending machines are concerned, it is necessary to determine ownership of such vending machines. If it is determined that the vending machines are owned (operated) by the hotel/motel, the hotel/motel is considered the retailer.

A separate charge for movies in the room is not subject to the tax because this is not a retail sale or an admission. If the establishment rents videotapes for a separate charge, this would be considered a taxable event for sales tax purposes.

Receipts from the provision of multi-channel video programming (MVP) services such as satellite or cable television, plus the provision of communication services are subject to telecommunications tax pursuant to KRS 136.600-660.

**Regulation 103 KAR 28:140**

Prior to 1/1/01, charges for interstate telephone calls were not subject to the tax, while charges made by hotels and motels to their guests for intrastate calls are subject to the tax. Effective 1/1/01, charges for interstate telephone calls, if such calls originate or terminate in Kentucky are subject to sales tax. The hotel/motel may not deduct from taxable receipts any charges billed to the hotel and motel by its telecommunications provider for telephone and telegraphic communications and services as provided in **Section 2 of Regulation 103 KAR 28:140**. The hotel or motel is considered to be the user and not a reseller of the telephonic services it purchases from its telecommunications provider.

Effective 1/1/06, charges for local phone calls are taxable.
TRANSIENT ROOM TAX

One audit/review area of great concern over the years has involved how the lodging facility handles what is termed the Transient Room Tax. The inclusion of this charge in the sales tax base has historically been mishandled by many taxpayers.

Gross receipts subject to sales tax on transient rentals includes the transient room tax levied under KRS 92A.390. This statute levies a transient room tax based on the rent charged for every occupancy of a suite, room, or rooms, by all persons, companies, corporations, and other like or similar persons doing business as motor courts, motels, hotels, inns, or similar accommodation businesses by local governments. Based on this statute and the Kentucky Court of Appeals decision in Second Street Properties, Inc. v. Fiscal Court of Jefferson County, Ky., 445 S.W. 2d 709 (1969), the transient room tax is considered a license tax levied upon the motel; therefore, it is to be added to the basic room rate when calculating the sales tax base. Also included in gross receipts subject to sales tax is the statewide transient room tax levied under KRS 142.400. This 1% statewide transient room tax became effective 6/1/05.

KRS 139.200 imposes the sales tax upon all retailers at the rate of 6% of gross receipts derived from "retail sales" or "sales at retail" made within this state. Additionally, the rental of any room or rooms, lodgings or accommodations furnished by any hotel, inn, motel or any other place providing rooms, lodgings or accommodations to transients is specifically defined by KRS 139.100(2)(a) or KRS 139.200(2)(a) to be a "retail sale" subject to tax. Gross receipts means the total amount of the sale without any deduction for the cost of the property sold or any other expenses. Since the sales tax is imposed upon the retailer for the privilege of engaging in the business of making "retail sales" or "sales at retail" and the sales tax is based upon gross receipts derived from such sales (including any transient room tax collected from customers as a separate item), it is the Department’s position that the transient room tax is properly included in gross receipts as defined in KRS 139.050 and is subject to sales tax.
Computation – Transient Room Tax

In a typical situation the taxpayer will merely compute the sales tax without including the transient room tax in the sales tax base. Consider the following . . .

EXAMPLE #1:

**TAXPAYER’S CALCULATION**

Basic Room Charge $78.00
Tax (Sales Tax Rate/Transient Room Tax Rate (10%)) 7.80
Total Charge for Room $85.80

**CORRECTED**

Basic Room Charge $78.00
Transient Room Tax (78.00 x 3%) 2.34
Statewide Transient Room Tax (78.00 x 1%) .78
Amount Subject to Chapter 139 Taxation - Sales Tax (80.34 x 6%) 4.87
Total Charge for Room – Per Audit $85.99

In Example #1, the taxpayer's failure to include the transient room tax in the sales tax base results in the tax liability being understated by 19¢.

EXAMPLE #2:

**TAXPAYER’S CALCULATION**

Basic Room Charge $95.00
Tax #1 (Sales Tax $95 @ 6%) 5.70
Tax #2 (Transient Room Tax $100.70 @ 3) 3.02
Total Room Charge $103.72

**CORRECTED**

Basic Room Charge $95.00
Tax #2 ($95.00 x 3%) 2.85
Amount Subject to Chapter 139 Taxation $97.85
Sales Tax ($97.85 x .06) 5.87
Total Charge for Room - Per Audit $103.72

In Example #2, the taxpayer included the sales tax in the tax base for transient room tax purposes. The taxpayer's failure to do the opposite (including the transient room tax in the sales tax base) results in the sales tax liability being understated by 17¢ ($5.70 instead of $5.87).
PURCHASE EXEMPTION CERTIFICATES

An area that requires an auditor’s attention, involves receipts from room rentals with no tax charged due to the issuance of purchase exemption certificates. Good faith issues related to the acceptance of these certificates is addressed in Section R of the Part I training session. Also, sales to government agencies, which is addressed in Section J, is another area of concern. Hotel/motels making such sales are required to maintain documentation to support these deductions.

COMMUNICATION

The Department, through the Kentucky Tax Service, Kentucky Tax Alert, Kentucky Sales Tax Facts and correspondence with the Kentucky Hotel and Motel Association, has made a good faith effort over the years to educate the taxpayer with regards to transient rentals.

AUDIT PROCEDURE

In that a hotel/motel is a many faceted organization, its records are unique. Specifics that may need to be examined are as follows:

Lodging, Accommodations and Space Rental, Banquet & Conference Rooms:

- Guest ledger cards.
- Daily cash reports.
- Validity of adjustments.
- Cash receipts journal (night auditor’s report).
- City ledger (billings and collections which normally do not appear on daily cash reports or are not at the front desk).
- General ledger.

Restaurants, Bars and Snackbars:

- Verification of guest checks and/or register tapes to determine the tax collection rate, collection and remittance.
- Daily cash report.
- Cash receipts journal.
- General ledger entries.
- City ledger to determine extraordinary income from catering, banquets and other activities which would not be detailed at the front desk or at a cash register.
- General ledger.
Vending and Amusement Machines:

- Determine Ownership.
- Maintenance contracts.
- Lease of space for a percentage of the gross receipts.
- Proper remittance of tax regarding soft drinks, food, Bell Captain (sophisticated vending machine with purchases charged directly to room), cigarette machines and ice machines.

Retail Outlets (store)

- Hotel Owned Outlets - Sales and Purchases Transactions.
- Additional aspects which may require examination:
  - Charged employee meals.
  - Lease or ownership of the facility.
  - Repair and maintenance shops within the total complex.

Another area of concern that surfaces quite often during the audit of a motel/hotel is the sale of assets. This is covered in Section H of Part I of the training session.

**MISCELLANEOUS QUESTIONS/ANSWERS**

**Hotel/Motel Room Keys**

A hotel/motel can purchase tax-free under a resale certificate property considered a part of the sale, rental or charge for room accommodations. Items which are entirely consumed directly by the occupants in a single occupancy of a room or accommodation subject to tax are considered a part of the rental charge for the room or accommodation and are not subject to tax when purchased under a resale certificate. Any item that is reusable by the occupant or another occupant is subject to tax at the time of purchase.

Upon registering at the hotel/motel, it is customary for the occupant to receive an envelope with the room number indicated and a plastic key that is coded for the room that is reflected on the envelope. Upon departure, it is customary/required for the occupant to return the key to the hotel/motel with such key being recoded for use by the next occupant. Although it is required of the current occupant to return the key upon departure, this does not always happen as planned.

**Question:** Is the envelope and plastic key considered consumed in a single occupancy and therefore exempt from tax or is the hotel/motel considered consumer of same and therefore subject to tax at the time of purchase?

**Answer:** In that it is the normal and customary practice to return the key after use by the occupant, it is the Department’s position that the hotel/motel is the consumer and thus subject to tax at the time of purchase. However, the envelope, which is normally consumed directly by the occupant in a single occupancy of a room, is considered part of the rental charge for the room and is not subject to tax when purchased under a resale certificate.