

Rulings of the Tax Commissioner

Document Number: 07-8
Tax Type: Retail Sales and Use Tax
Brief Description: Rental of private residences are deemed occasional sales for the two week period
Topics: Basis of Tax; Local Power to Tax; Property Subject to Tax
Date Issued: 03/09/2007

March 9, 2007

Re: Request for Ruling: Retail Sales and Use Tax

Dear *****:

This is in response to your letter in which you request a ruling regarding the application of the retail sales and use tax to the rental of private residences.

FACTS

You represent that you plan to open a business serving as a broker between ***** race fans and private homeowners in Virginia who wish to rent their private residences two weekends a year to those attending race events. You ask if your business is required to collect the retail sales tax on the rentals.

RULING

Retail Sales and Use Tax

Business acting as broker

Virginia Code § 58.1-603 imposes the Virginia sales tax on the "gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set forth in the definition of

'retail sale' in § 58.1-602." *Virginia Code* § 58.1-602 defines "retail sale" to specifically include:

the sale or charges for any room or rooms, lodgings, or accommodations furnished to a transient for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration.

Title 23 of the Virginia Administrative Code (VAC) 10-210-730, addressing hotels, motels, tourist camps, etc., provides:

The tax applies to the sale or charge for any room or rooms, lodgings or accommodations furnished to transients **by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or other similar place**. The tax applies to all sales of tangible personal property by such businesses. [Emphasis added.]

It is clear from the statute and regulations that the tax is imposed on the gross proceeds derived from the charge for transient accommodations made by the entity providing the accommodations.

The information provided in your letter indicates that your business will act as a broker between race fans and private homeowners. While not explicitly stated, it appears that your business does not own or operate the place (private residences) where the accommodations are furnished. Accordingly, based on the facts presented, your business would not be required to collect and remit sales tax on the accommodations.

Property owners

As noted above, the entity providing transient accommodations to the guest is typically required to collect and remit the applicable sales taxes. However, *Va. Code* § 58.1-609.10 2 provides that the retail sales and use tax does not apply to "[a]n occasional sale, as defined in § 58.1-602."

Virginia Code § 58.1-602 defines occasional sale as: a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any

business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

Pursuant to Title 23 VAC 10-210-1080 B 1, the term occasional sale means "[a] sale by a person who is engaged in sales on three or fewer separate occasions within one calendar year, except that sales at fairs, flea markets, circuses and carnivals and sales made by peddlers and street vendors are not occasional sales."

Pursuant to *Va. Code* § 58.1-609.10 2 and Title 23 VAC 10-210-1080, the transactions are deemed occasional sales, as they occur three or fewer times within a calendar year. Furthermore, based on the facts presented, the rental of rooms in a private residence does not qualify as a retail sale as defined in *Va. Code* § 58.1-602 because the rooms are not regularly furnished to transients for a consideration. Additionally, the residences are not hotels, motels, etc., as required by the statute. Based on these factors, the property owners are not liable for the retail sales tax on charges for the rental of rooms in private residences or the rental of an entire private residence.

Local Taxes

Virginia Code § 58.1-3891 A provides, in pertinent part, that "[a]ny county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days."

The Taxpayer should contact the Commissioner of the Revenue for the locality in which it is conducting business regarding the application of this tax and any other local taxes to its business activities. The Taxpayer may obtain a list of Virginia Commissioners of the Revenue by the visiting the Commissioners of the Revenue Association of Virginia website located at www.vacomrev.com.

Other Information

The Business Registration Guide found on the State Corporation Commission's (the "SCC") website, located at www.scc.virginia.gov,

provides additional information for those seeking to register a business in Virginia. The Guide can be found on the Office of the Clerk's home page on the SCC's website.

This ruling is based on the facts provided as summarized above. It is assumed that your business is acting solely as an intermediary between the property owner and the guest without acquiring any ownership or control over the accommodations being rented. It also assumes the property owners rent their residences only for the ***** events as stated in your letter and for no other occasions during the calendar year. Any change in these facts and assumptions or the introduction of new facts may lead to a different result.

The *Code of Virginia* and regulation sections cited, along with other reference documents, are available on-line at www.tax.virginia.gov in the Tax Policy Library section of the Department's web site. If you have any questions about this response, you may contact ***** in the Department's Office of Policy and Administration, Appeals and Rulings, at *****.

Sincerely,

Janie E. Bowen
Tax Commissioner

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