

Rulings of the Tax Commissioner

Document Number: 96-3
Tax Type: Retail Sales and Use Tax
Brief Description: Lodging; Reservation services
Topics: Taxability of Persons and Transactions
Date Issued: 01/05/1996

January 5, 1996

Re: Request for Ruling: Retail Sales and Use Tax

Dear*****

This is in response to your letter of August 28, 1995 regarding the application of the tax to the activities of***** (the "Taxpayer").

FACTS

The Taxpayer operates a reservation service for bed and breakfast accommodations. As an alternative to traditional hotels or motels, these accommodations are provided in private homes (the "Hosts") which make rooms available to guests during peak tourist times.

As part of its service, the Taxpayer invoices guests. Invoices include: (i) room charges for the accommodations, including charges for meals, if applicable; (ii) a deposit amount (calculated at 25% of the room charges), and (iii) the charges for the Virginia retail sales tax and the applicable local lodging tax.

The Taxpayer collects and retains the 25% deposit charge. In effect, this represents the Taxpayer's fee for providing its services to the Hosts. The Taxpayer also collects the state and local taxes which are subsequently remitted by the Taxpayer to the department and to the locality, respectively. The Taxpayer has traditionally computed the tax on the room charge less the 25% deposit. The Taxpayer does not collect the remainder of the room charges. These charges, which consist of the room charges less the 25% deposit, are paid by guests directly to the Hosts upon arrival at the accommodations.

You request a ruling on two issues pertaining to these reservation transactions. First, you seek permission to continue collecting and remitting the sales tax on behalf of the Hosts. Second, you inquire on what amount the tax should be charged.

DETERMINATION

Collecting and Remitting the Tax: Code of Virginia § 58.1-602 defines a "sale at retail" to specifically include charges for any rooms, lodgings or accommodations furnished to transients for less than 90 days. Further, Code of Virginia § 58.1-612 sets forth the requirements which give the Commonwealth the authority to require dealers to register with the department for the collection and remittance of sales tax, and expressly includes any person who makes sales at retail in Virginia. Therefore, the Hosts in this case, who provide accommodations to transient guests, would be considered dealers.

Notwithstanding the above, and in order to reduce the administrative burden on all parties concerned, I will agree to allow the Taxpayer to collect and remit sales tax on behalf of its Hosts. However, certain conditions need to be addressed, as follows:

The 1% local portion of the sales tax needs to be allocated to the localities in which the Hosts are providing accommodations. Accordingly, when the Taxpayer files its monthly Dealer's Sales and Use Tax Return, it will need to inform the department what portion of the local tax goes to each locality.

The Taxpayer will not have to file a separate return for each locality; however, you will need to complete a Form ST-9B each month in order to report the local portion of the tax. A sample ST-9B is enclosed. A member of my staff will contact you soon after you receive this letter to discuss this filing requirement.

This policy agreement does not alter the fact that Hosts are dealers with respect to sales of accommodations and possibly of other tangible personal property. Therefore, Hosts are still required to register with the department to collect and remit the tax if they make any taxable sales for which sales tax is not being collected by the Taxpayer.

In most instances, Hosts provide rooms and meals. Generally, hotels, motels and guesthouses which serve meals may purchase food for

resale exempt of the tax by using a resale exemption certificate, Form ST-10. However, using the ST-10 requires a sales tax registration. The Hosts in this case who are not registered for collection of the tax cannot use the resale exemption certificate. They must therefore pay the tax on their purchases of food regardless that the food will be resold to guests.

This agreement is applicable to the Virginia sales tax and has no bearing on local tax filing requirements. The Taxpayer may wish to contact its local taxing jurisdictions regarding the collection and remittance of applicable local taxes.

Amount of Tax Charged: As noted above, the Taxpayer bills and receives 25% of the room charge as a deposit to hold the reservation, but retains this deposit as a fee for providing its many services to the Hosts. The Taxpayer suggests that this service fee is not subject to the tax.

The term "sales price" is defined in Code of Virginia § 58.1-602 to mean "the total amount for which tangible personal property or services are sold, including any services that are a part of the sale...." Given this very clear direction under the law, the department has no alternative but to hold the entire charge taxable.

I trust that this information addresses your concerns. However, please contact ***** in my Office of Tax Policy at***** if you have any questions regarding this letter.

Sincerely,

Danny M. Payne
Tax Commissioner

OTP/102471