



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

Memorandum

To: Lodging Accommodation Providers
From: Sales and Special Taxes Compliance Section
Date: September 7, 2012
Subject: Taxability of Lodging Services – Crew Camps

The Tax Commissioner's Office has received many inquiries regarding the taxability of charges for renting or leasing lodging accommodations, especially regarding facilities recently brought into the state to ease the housing shortage for workers located in North Dakota. This memo discusses the responsibility of retailers to collect tax on room rentals and associated services and to pay sales or use tax on property used to provide those services.

Current North Dakota law requires retailers that are in the business of renting or leasing lodging facilities to collect state sales tax and applicable local sales and lodging taxes (hereafter referred to as sales taxes) on all charges for the rental or lease of lodging accommodations. An exception to this rule is the rental or lease of lodging accommodations for periods of thirty or more consecutive days. Rental or lease charges for room rental for a period of thirty or more consecutive days are not subject to sales taxes if the same individual occupies the room for the rental period. The exemption for room rentals or leases may be claimed only if the retailer maintains records documenting that the same individuals occupied the same rooms for thirty or more consecutive days.

Rooms rented for a period of thirty or more days by one party but are not occupied by the same individual or individuals are subject to sales taxes.

Businesses that purchase, lease, or rent housing solely for their employees, contractors, or contractor's employees (hereafter referred to as employees) are not retailers required to collect sales tax if these businesses charge their employees for use of the rooms but do not also rent or lease lodging to the public. Businesses that are not retailers renting or leasing lodging services to the public should not collect sales taxes from employees on charges to employees for use of the lodging facilities.

Any business that regularly advertises rooms for rent or lease to the public, including an employer that rents rooms to its own employees, is deemed to be a retailer in the business of renting or leasing lodging facilities. Retailers that provide lodging services in North Dakota must register for a North Dakota sales and use tax permit, collect sales taxes on charges for room rentals and file sales tax returns with the Tax Department. Retailers must also collect city lodging taxes and city or county sales taxes if the lodging facility is located within a city or county that imposes a tax.

Gross receipts from the sale of prepared food are subject to state and local sales taxes. If meals and nontaxable lodging are lump sum billed, the entire charge is subject to tax. If prepared meals are itemized separately from nontaxable lodging, only the charges for meals are subject to tax. Sales of candy, soft drinks, and other miscellaneous goods by a lodging facility to the facility occupants are also subject to sales tax.

Prior to this notice, the Tax Commissioner's Office had responded to specific inquiries that lease charges for temporary lodging facilities rented or leased for the sole purpose of providing housing for employees were not subject to sales taxes. However, after further review, we find these facilities are equivalent to traditional lodging facilities and that all lodging facilities must apply tax in the same manner. Retailers that are in the business of renting or leasing lodging facilities that had previously entered into rental or lease agreements that were considered nontaxable under Tax Commissioner policy prior to this notice must begin collecting sales taxes on these transactions no later than October 1, 2012.

In addition to collecting tax on the gross receipts from room rentals, companies that provide lodging accommodations are required to pay sales or use tax on buildings, structures, equipment, supplies and materials used to provide this service. For additional information regarding sales and use tax obligations of lodging accommodations providers, please see our sales tax *Hotels and Motels* guideline, which is available on our web site at www.nd.gov/tax/salesanduse/pubs.

The following are some common examples of taxable and nontaxable lodging facility transactions. Please note that not all factual scenarios are covered in these examples. Varying factual scenarios may change the resulting taxability of the transaction.

Example 1

Company A is in the business of providing lodging accommodations and enters into a contract with Company B, a pipeline construction contractor, to provide housing for Company B employees and employees of subcontractors that are doing work for Company B. The employees occupy the room for periods of less than thirty consecutive days. Company B, who normally does not provide lodging accommodations to the public, charges its employees \$25 a day to stay in Company A's facility to help recover its cost of providing housing. Company A must charge sales taxes on the charges to Company B for the accommodations provided. Because Company B is not a retailer in the business of providing lodging accommodations, Company B should not charge sales taxes on the \$25 a day fee it charges to employees.

Example 2

The same facts as Example 1 except some of the employees occupy the same room for sixty consecutive days. Charges for rooms occupied by the same individual for thirty or more consecutive days are exempt from tax. Therefore, Company A does not charge sales taxes to Company B on the rooms occupied by the same individual for thirty or more consecutive days. However, Company A must charge sales tax to Company B if: 1) the same Company B employee occupies the same room for less than thirty days; 2) or different employees of Company B occupy the same room, regardless of how many days Company B rents the same room for its employees.

Example 3

Company C, an oil and gas exploration company, purchases a lodging facility to provide housing for its employees. Company C charges its employees \$50 a day to stay at the facility, but does not advertise or rent rooms to the public. Because Company C does not make rooms available to the public, it is not a retailer in the business of providing lodging services and is not required to collect sales taxes on the charge to employees.

Example 4

The same facts as Example 3 except Company C advertises in the local newspaper that it has rooms available to rent for \$100 a night. Because Company C is advertising and renting rooms to the public, it is a retailer in the business of renting lodging and must charge sales tax on its room rental charges for rentals of less than thirty consecutive days to the public and to its employees. If Company C does not hold a valid sales and use tax permit, it must register for a sales tax permit and file sales tax returns with the Tax Commissioner.

Example 5

Company D is a retailer that provides lodging services in North Dakota. Company D contracts with Company E to provide Company E's employees rooms, prepared meals, and transportation services to and from job sites. Under the terms of the contract, Company D charges \$250 (lump-sum fee) a day for each occupant. Company E employees have each occupied the same room for the past thirty days. Employee transportation services and room rentals for thirty or more consecutive days to the same individual are exempt from sales taxes. The gross receipts from sales of prepared food are subject to sales taxes. However, in this example, Company D bundles taxable and nontaxable goods and services together for one lump-sum price. Because the nontaxable goods and services are not itemized separately, Company D must charge sales taxes on the entire \$250 a day charge for rooms, prepared food, and transportation services.

Example 6

Assume the same facts as Example 5 except Company D itemizes the daily charges in its contract with Company E as follows: \$175 for room rental, \$50 for prepared meals, and \$25 for transportation to and from the work site. The room charges and transportation charges are exempt from tax. Company D must charge sales taxes on the \$50 daily charge for prepared food. No tax should be collected on the exempt room rental charges or transportation charges.

Example 7

Company F is a retailer in the business of providing lodging accommodations to its customers. Company F transports a facility that includes sleeping rooms, kitchen facilities, dining rooms, and recreation and exercise facilities into North Dakota for use in providing lodging services. Company F is responsible for paying sales or use tax on the fair market value of the facility when it enters North Dakota. If Company F previously owned the facilities in another state and paid sales or use tax to that state, North Dakota will provide credit for the state and local taxes legally due and paid to the other state.

If you have any questions about this information, please contact the sales tax compliance section at 701.328.1246 or email salestax@nd.gov for further clarification.