



**Revenue Ruling
No. 04-004
Sales and Use Tax
April 23, 2004**

State Sales Taxability of Certain Charges by Hotels Associated with Room Reservations

The purpose of this revenue ruling is to discuss the state sales taxability of certain charges by hotel operators in connection with room reservations.

Facts

- 1. No-Show Charges for Guaranteed Rooms.** A person makes a reservation with a hotel for a sleeping room on a certain date and for an agreed upon rate. Regardless of the hour that the customer checks into the hotel on the specified date, the hotel agrees to set aside a room for the customer. The person guarantees the reservation of the room by providing a credit card number or by mailing a check to the hotel. The reserving customer is typically notified at the time of making the reservation that the room rate will be due if the customer does not cancel the reservation prior to a certain number of days before the scheduled date of arrival. On the day of the reservation, the hotel holds a room for the person. If the reserving customer does not arrive or fails to cancel a reservation by the prescribed time, that person is charged an amount, which is usually the agreed occupancy rate for the room that was set aside.
- 2. Forfeitable Room Deposit or Cancellation Fee.** A person makes a deposit or provides a credit card number to the hotel in return for the hotel's agreeing to reserve a room for the person until a certain time, after which, if the reserving customer has not occupied the room or cancelled the reservation, the hotel is without obligation to hold the room for that person and is able to furnish the sleeping room to another potential customer. If the reserving customer has not occupied the room or cancelled the reservation by the agreed time, the reserving customer is charged an amount of money that may be the full agreed cost of the room occupancy or less than the agreed cost of the occupancy. If the reserving customer arrives at the hotel later than the agreed time, and the hotel has a room available for the person, the forfeitable room deposit or cancellation fee is credited against the charge for the occupancy of that room.
- 3. Early Cancellation Fee.** This is an amount charged to a guest who agrees in advance to a room reservation for a certain number of nights and then "checks out early," that is, the guest fails to stay through the period of the reservation. The vacated room is available for furnishing to other potential customers of the hotel.
- 4. Group Cancellation Charges.** This is a fee that a hotel charges to a tour operator or group of travelers when a group or part of a group that has reserved rooms at the hotel fails to occupy the number of rooms that have been reserved without the operator or the group having cancelled or amended its reservation by the date specified in its agreement with the hotel. The fees are generally expressed as liquidated damages in the contract between the hotel and tour operator or group.

The Law

La. Rev. Stat. Ann. §47:301(14)(a) (West 2004) defines taxable sales of services to include “the furnishing of sleeping rooms, cottages, or cabins by hotels.” La. Rev. Stat. Ann. §47:301(6) (West 2004) provides that the term “hotel” “means and includes any establishment engaged in the business of furnishing sleeping rooms, cottages or cabins to transient guests, where such establishment consists of six or more sleeping rooms, cottages or cabins at a single business location.”

Analysis of the Term “Furnish”

As provided in §47:301(14)(a), three elements must be present for the sales taxable event to be triggered: 1.) a hotel, 2.) must furnish, 3.) a sleeping room. In the transactions listed in items one through four, the requisite elements of a hotel and a sleeping room are present. What remains at issue is the definition of “furnish.” This specific term is not defined in the sales tax code and regulations; therefore, the common and ordinary meaning of the term should be considered. *Webster’s New Universal Unabridged Dictionary*, p. 743 (Deluxe 2nd ed. 1983) defines “furnish” as “to supply with anything wanted or necessary; especially, to put furniture into (a room, etc.)” or “to supply; to provide; to give.” *Black’s Law Dictionary*, p. 675 (6th ed. 1990) defines “furnish” as “to supply, provide, or equip, for accomplishment of a particular purpose.”

These two dictionary meanings indicate that “to furnish” requires that something be available for acceptance or use by another for accomplishment of a particular purpose. The dictionary meanings do not define “furnish” as requiring a transfer of possession. Applying the common and ordinary meaning of “furnish” to the scenarios at hand, a room has been “furnished” when the person who guaranteed the reservation may use it at any time during the first day and it cannot be used by another.

Having a specific room designated for a guest is not the critical element in determining if a room has been “furnished” to a guest. This is because a hotel must retain a sufficient number of rooms to accommodate all potential guests who have guaranteed their reservations. If a hotel has 20 rooms that are unoccupied and 15 of those rooms have been reserved for guaranteed reservations, only five rooms remain available for rental to walk-in customers. The 15 guaranteed rooms have already been furnished to the reserving customers and cannot be rented again.

Ruling

Applying the above analysis to the four scenarios described above, the state sales tax applies to the furnishing of sleeping rooms by hotels, as follows:

- 1. No-Show Charges for Guaranteed Rooms.** Because a room has been set aside for, or furnished to, the reserving customer, the hotel charges the customer for the furnishing of the room. The charge to the reserving customer is subject to the state sales tax.
- 2. Forfeitable Room Deposit or Cancellation Fee.** Unlike a guaranteed reservation, this type of reservation requires the reserving customer to occupy the room or cancel the reservation before a certain time to allow the hotel to make the room available for occupancy by other potential customers. If the charge to the reserving customer for failure to occupy the room or cancel the reservation is less than the agreed room occupancy rate, and the reserving

customer has not occupied the room, the charge is not subject to the state sales tax. State sales tax will be due on a forfeitable room deposit or cancellation fee that is equal to the room occupancy rate, unless evidence is provided that the charge is for canceling the reservation before the normal hours of room availability but after the hotel's deadline for canceling the reservation without incurring the fee. If a nontaxable room deposit or cancellation fee is later allowed as a credit against a charge for a hotel room, the state sales tax is calculated on the price of the room before deducting the credit for the deposit or fee.

3. **Early Cancellation Fee.** The charge is made to the customer for checking out of a hotel one or more days earlier than the agreed duration of occupancy. Because the hotel has not set aside or furnished a room to the customer on the days after the customer has vacated the room, the charge to the customer is not subject to the state sales tax.
4. **Group Cancellation Charges.** When the fee that a hotel charges to a tour operator or group of travelers when a group or part of a group that has reserved rooms at the hotel fails to occupy the number of rooms that have been reserved is unrelated to the hotel's setting aside or furnishing rooms on the group's scheduled dates of occupancy, the amounts charged to the operator or group as liquidated damages are not subject to the state sales tax. The nontaxable status of the liquidated damages applies only when the hotel is free to rent unused rooms to any potential guest.

When the fee charged by the hotel is expressed as a room charge because the tour operator or group ultimately did not occupy the number of rooms that the hotel set aside and furnished to the operator or group on the scheduled date of occupancy, the fee is subject to the sales tax under the standards set out above.

Questions concerning this matter can be directed to the Taxpayer Services Division at (225) 219-7356.

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