

**Revenue Ruling  
No. 07- 003  
September 6, 2007  
Sales and Use Tax**

**Sales Tax Applicable to Long Term Occupancy of Hotel and Motel Rooms,  
Recalling and Superceding Department Revenue Ruling No. 03-007**

The purpose of this revenue ruling is to amend prior interpretations of Louisiana sales tax law and regulations applicable to the use of hotel and motel rooms by transient and non-transient or permanent occupants.

**Issues**

What are the necessary requisites to exclude a user of hotel services from sales tax?

**Law**

Statutes establish the appropriate exclusion from sales tax on the occupancy of hotel rooms by non-transient or permanent occupants.

Louisiana Revised Statute 47:301(14) defines “Sales of Services” to mean and include (14)(a) “[t]he furnishing of sleeping rooms, cottages or cabins by hotels. “Hotel” is defined at R.S. 47:301(6) to include 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**

The determination of whether occupancy is transient or permanent is not determined by the amount of time spent at a location, but as the character of use. Previous interpretations of the statute considered only the length of time of use as the sole factor in determining usage. “The length of stay is merely an evidentiary, and not controlling, circumstance, and one who retains the character of a transient or a traveler may be a guest although he or she stays for a considerable time.” 40A *Am.Jur.2d* Hotel, Motels §23.

**Length of Stay**

In addition to the length of the stay, the character of use must be that of a home and permanent residence. The essential distinction between a transient accommodation and a permanent home use is the fact that the permanent occupant uses the hotel as a home, and not merely as a place to sleep. “The length of the stay, the existence of a special contract for the room, and the existence of a home elsewhere, are material circumstances in determining whether a person is a guest rather than a boarder or lodger ...”. 43A *C.J.S. Inns, Hotels, and Eating Places* §7 Generally. The Department will require the physical property of the accommodations to include the necessities required of a home, such as a kitchen with all major facilities (refrigerator, stove and sink) integrated into one location within the occupied area. While this is also an indication of the accommodation being used as a permanent residence, it is not conclusive without the fulfillment of other necessary factors.

Therefore, the administrative rule establishing that one is a “permanent” user of hotel services if the room is paid for on a monthly basis and the guest remains for a time period greater than two consecutive months is retracted as the basis to establish use of hotel accommodations as permanent and not subject to sales tax.

### Physical Presence

The word “person” has broad connotations in Louisiana law, which includes that of both natural and juridical personalities. It is significant that the language of the statute uses the term “transient guest”, and not “transient person”.

The character of the use rests upon the accommodations of the occupied physical area being used by a physical person. *Black’s Law Dictionary*, 8<sup>th</sup> ed. (2004), supports this analysis and defines ‘transient’, *n.* as “[a] person or thing whose presence is temporary or fleeting.” The definition itself requires ‘presence’, meaning actual physical *situs*. The ‘physical presence’ factor can only be fulfilled by a natural person.

The mere ability of a corporation to contract with a hotel for a time period satisfying one requisite of the numerous evidentiary factors that determine one as a permanent resident is legally insufficient to meet the criteria necessary to establish permanent residency. Further, the consistent assignment of contracted rooms to various individuals, employees, or agents but who are not living in a hotel as a permanent residence will not satisfy the factor determining character of the use as that of a home or permanent residence. Such use is transient use, and not eligible for exclusion from sales taxation. Even regular stays by an occupant at a particular hotel, whether consistently and/or frequently occupying the same room or rooms, do not qualify a user as permanent.

Thus, the term “person” as defined within R.S. 47:301(8) shall not apply to the interpretation of R.S. 47:301(14) and R.S. 47:301(6). The term “guest” is and remains a term of special use for purposes of sales taxation under 47:301(6). In interpreting LAC 61:I.4301(A), words and phrases shall be read with[in] their context and the specific section of law to which they are applicable. To determine the meaning of words for interpretation, the common usage of language is rejected when technical words or phrases have acquired a peculiar meaning in the field of taxation. The use of the term “guest” within R.S. 47:301(6) is special and technical. The broader term “person” was not used in codification of R.S. 47:301(6) by redactors of the Revised Statutes of 1950.<sup>1</sup>

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<sup>1</sup> The use of “guest” as a term of special use for taxation is directly supported by review of R.S. 37:1901 “Transient merchant” and “person” defined”, which statute was adopted in 1932:

§ “Transient merchant” and “person” defined.

“Transient merchant” as used in this Part means any person engaging temporarily in a retail or wholesale sale of goods, wares or merchandise, in any place in the State of Louisiana and who, for purpose of conducting such business, occupies any lot, building, room or structure of any kind. The term shall not be construed to apply to any person selling goods, wares or merchandise of any description, raised, produced, or manufactured by the individual offering them for sale; nor to persons handling vegetables, fruits or perishable farm products at any established city, town or village market; nor to persons operating stores or refreshment stands at resorts or having booths on or adjacent to the property owned or occupied by them; nor to any stands on any fairgrounds, not to any vendor of soft drinks or refreshments.

“Person” as used in this Part includes any corporation, or partnership, or two or more persons having a joint or common interest.

### **Ruling**

The basis for the taxability or non-taxability of hotel accommodations is not that of time or method of payment, but the character of the use. Length of time of use and method of payment are essential elements of one who is a permanent resident, but in and of themselves do not establish the permanency of the use. If the use is that of a hotel, then the character of the use is transient, and the use is taxable. However, if the purpose of the use is that of permanent residence, then the user is considered permanent. Fulfillment of several factors including but not limited to physical presence, long term use, the contractual nature of the arrangement, and the permanency of the habitation are essential components to establishing the character of the use as that of permanent residence or home. Only the use of a hotel as a permanent residence or home by a natural person is excluded from payment of sales tax.

Article 61:I.4301(C)Hotel(b) of the Louisiana Administrative Code now provides that for the transaction to be considered a rental as a permanent residence to permanent occupants, the physical properties of the space must provide the basic elements of a home, including full-sized and integrated kitchen appliances and facilities. Additionally, the occupant must use the facilities of the hotel as a home with the intent to permanently remain. When all conditions of the above two standards are met, the occupant may be considered non-transient for the purposes of the state and local sales or use tax. A lease with a hotel for a period of not less than one year will be considered as evidence in support of permanent residency status, when the area rented contained the required physical properties of the hotel accommodations at the beginning of the lease. Proof that hotel accommodations contain the requisite physical properties of a home or permanent residence, and the hotel accommodations within a unit are continuously rented by one person or family uninterrupted for a period greater than one year will be considered as evidence in support of permanent residency status. The Department may require additional evidentiary support of claims of non-transient status.

Revenue Ruling No. 03-007 interpreting Article 61:I.4301(C)Hotel(b) of the Louisiana Administrative Code is hereby withdrawn and superseded.

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