



State Occupancy Fee and Municipal Occupancy Tax Imposed on Occupancies

LR: 2013-3-SUT – Issued September 10, 2013
Tax: Sales and Use Tax

A taxpayer requested a Letter Ruling on the application of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) and the State Occupancy Fee and Municipal Occupancy Tax (N.J.S.A. 54:32D-1) to charges for occupancy fees.

Facts

Taxpayer is a corporate housing company headquartered in California that is considering doing business in New Jersey. Taxpayer provides furnished apartments for residents on a business-to-business basis and is not open to the public for transient occupancy. Taxpayer does not maintain offices for access by the general public and does not provide typical hotel services such as room service, restaurants, valet parking, front desk services, conference rooms, 24-hour security, etc. Taxpayer forms landlord-tenant relationships and works with residents accordingly. Taxpayer provides furnished apartments and does not provide conveniences beyond those found in one's own home.

Issue

Whether Taxpayer is required to charge and collect Sales and Use Tax and the State Occupancy Fee and Municipal Occupancy Tax on charges for occupancies.

Discussion

The Sales and Use Tax Act imposes tax at a rate of 6.625% on "the rent for every occupancy of a room or rooms in a hotel or motel in this State." N.J.S.A. 54:32B-3(d). This rate is effective as of January 1, 2018, reduced from the 2017 tax rate of 6.875% in accordance with P.L. 2016, c. 57. The same facilities must also collect the State Occupancy Fee (effective July 1, 2004 – imposed at a rate of 5%) and, if applicable, the Municipal Occupancy Tax (effective July 1, 2004 – imposed at a rate 1% up to a rate of 3%, at the municipality's option, pursuant to local ordinance). N.J.S.A. 54:32D-1.

For New Jersey Sales Tax purposes, there is a distinction between renting a room in a hotel-type facility and renting real property.

A "hotel" is defined as a building or portion regularly used and kept open as such for the lodging of guests. N.J.A.C. 18:24-3.2. Hotels are regularly kept open for the purpose of furnishing sleeping accommodations and related services for pay to tourists, transients, or travelers. The relationship between the operator of the establishment and the occupant is that of an innkeeper and guest, not that of a landlord and tenant, although the signing of a lease cannot overcome the operation of a facility as a hotel. N.J.A.C. 18:24-3.4(a).

Examples of a hotel include, but are not limited to, the following:

1. An apartment hotel, bed and breakfast, motel and inn;
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2. A boarding house or rooming house containing eight or more units;
3. A condotel (for example, a building used as both a condominium and a hotel); and
4. Any other building or group of buildings in which sleeping accommodations are normally available to the public on a transient basis. N.J.A.C. 18:24-3.4(a).

Implicit in the definition of hotel is transient use – that is, hotel rooms are available at any time to travelers and other transients and generally include linens, maid service, and often room service. N.J.A.C. 18:24-3.4(d). The manner in which a hotel is owned has no effect on the Sales Tax treatment of its rentals. N.J.A.C. 18:24-3.4(b). Hotels are typically maintained by onsite management. N.J.A.C. 18:24-3.4(e).

An example of a facility that is not treated as a “hotel” for purposes of the Sales and Use Tax Act includes a furnished or unfurnished private residential property (that is, condominiums, bungalows, single-family homes and similar living units), where no maid service, room service, linen service, or other common hotel services are made available by the lessor and where the keys to the property are provided to the lessee at the location of an offsite real estate broker. The furnishing of linens without the service of changing the linens does not alter the nontaxable nature of the facility. N.J.A.C. 18:24-3.5(a) (6).

If a facility qualifies as a “hotel,” Sales Tax must be collected on the rent for occupancy. In addition, the same facilities also must collect the State Occupancy Fee and the Municipal Occupancy Tax, if applicable. However, note that if a person occupies a room at such a facility for 90 consecutive days, he or she is considered to be a permanent resident, and the occupancy is not subject to Sales Tax, the State Occupancy Fee, or the Municipal Occupancy Tax. N.J.S.A. 54:32B-2(m).

Conclusion

Taxpayer is not required to collect New Jersey Sales and Use Tax and the State Occupancy Fee and Municipal Occupancy Tax to charges for occupancies since Taxpayer is not operating as a hotel.

A Letter Ruling is limited to the facts set forth therein and is binding on the Division of Taxation only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. A Letter Ruling is based on the law, regulations, and Division policies in effect as of the date the Letter Ruling is issued or for the specific time period at issue in the Letter Ruling.