

January 2008

North Carolina Department of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001

IMPORTANT NOTICE: Rentals of Hotel Rooms and Accommodations

Operators of hotels and similar type businesses, including owners of private residences and cottages who rent to transients (and rental agents who rent such accommodations to transients on behalf of the owners), are considered retailers for purposes of administering the North Carolina sales and use tax laws. A privilege tax is imposed on a retailer's gross receipts derived from rentals of rooms and accommodations at the State general rate and applicable local rates unless specifically exempt by statute. This notice clarifies the types of charges that are included in the gross receipts derived from rentals of rooms and accommodations.

Taxable Receipts from Rentals of Rooms and Accommodations

G.S. 105-164.4(a)(3) provides that:

“Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days...”

In addition to the charge for the room or accommodation, accommodation operators may furnish items of tangible personal property or provide other services or amenities for which an additional charge is made. Such items are subject to tax as part of the rental of the accommodation when the owner of the accommodation makes those items available for rental to its guests. The hotel or similar type business is engaged in the business of providing rooms or accommodations, and it is that activity that gives rise to the furnishing of items of tangible personal property. Consequently, charges for cribs, roll-away beds, refrigerators, microwave ovens, and similar items are included in the gross receipts derived from rentals of rooms or accommodations and are subject to tax under G.S. 105-164.4(a)(3).

The following charges are considered to be included in the gross receipts derived from rentals of rooms and accommodations and are subject to tax, unless specifically exempt by law, regardless of whether the charges are separately stated from the base room or accommodation rate:

- Credit card fee;
- Damage fee;
- Early/late departure fee;
- Extra person charge;
- In-room safe rental;

- Inspection fee;
- Linen fee;
- Maid/cleaning fee;
- “Peace of mind” fee (similar to insurance but provided by hotel or rental agency rather than third-party carrier);
- Pet fee (incurred by guests who have pets traveling with them);
- Reservation fee (also referred to as a handling, processing, or administrative fee);
- Security deposit;
- Smoking fee;
- Transfer fee (for changing to a different room or unit or a different date);
- Tentative reservation fee (for priority reservation the following year).
- Charges for cribs and roll-away beds;
- Charges for microwave ovens and refrigerators.

Taxable Receipts from Rentals of Tangible Personal Property (Not Accommodations)

Hotels and similar businesses may make rentals of or charges for tangible personal property that are considered separate from the charges for the rentals of rooms and accommodations. **Such charges are taxable as rentals of tangible personal property rather than as part of the rentals of rooms or accommodations and are subject to sales and use tax under a different statute in the Sales and Use Tax laws.** G.S. 105-164.4(a)(2), which levies the tax on rentals of tangible personal property, provides that:

“The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer...”

The following charges are considered to be rentals of tangible personal property and are subject to tax under G.S. 105-164.4(a)(2) regardless of whether the charges are separately stated from the charge for the room or accommodation:

- Video tapes, DVDs, and related video equipment;
- Beach equipment such as chairs, toys, and umbrellas;
- Recreational equipment such as skis, surf boards, and snorkeling equipment;
- Audio visual equipment.

Non-taxable Receipts

The following charges are not considered part of the gross receipts derived from rentals of hotels or similar accommodations and are not rentals of tangible personal property; therefore, these charges are exempt from sales and use tax provided the charges are separately stated:

- Banquet room rental and related facility or service fee (unless the rental is in connection with a catered event);
- Cancellation fee;
- Internet service;
- Guaranteed no-show fee (unless the fee is at the customary or agreed-upon rate, the guest is entitled to the use of the room, and the room cannot be rented to another party);
- Laundry service (provided by an outside laundry/dry-cleaning establishment);

- Returned check charge;
- Telephone calls (unless a set fee is charged to all transients regardless of whether calls are made);
- Trip insurance provided by a third party.

Other Specific Transactions

Pay-per-view movies. Effective January 1, 2007, pay-per-view movies are considered video programming and are subject to the combined general rate of tax under G.S. 105-164.4(6). The video programming service provider is liable for collecting the tax, but, depending on the terms of the contract, a hotel may act as agent for the provider and collect the tax from the guest. An "IMPORTANT NOTICE: Sales Tax on Video Programming Services" dated October 2006, which is available on the Department's website at www.dorn.com, contains additional information on video programming.

Vacation packages. Effective January 1, 2007, the charge for a vacation package that includes a taxable service (such as room rental) and an exempt service (such as green fee) can be allocated between the taxable and exempt portions of the package notwithstanding that the exempt service is not separately stated. However, a vacation package that includes one or more services (taxable or exempt, such as room rental and/or green fee) and tangible personal property (such as meals) is subject to sales and use tax unless the charge for the exempt portion is separately stated; the charges cannot be allocated between the taxable and exempt portions. **Effective October 1, 2007**, the charge for a package that includes one or more services and tangible personal property may be allocated between the taxable and exempt portions of the package provided certain conditions are met. For example, if a package includes lodging, meals, and green fees for one price, sales tax is due on the portion representing the lodging and meals; the portion of the charge representing the green fees is not subject to tax. This change is the result of the enactment of a new definition of "bundled transaction" and related taxability provisions that are explained in Directive SD-07-1, which is available on the Department's website.

Questions about this notice can be directed to the Taxpayer Assistance Division at telephone number 1-877-252-3052 (toll-free) or in writing to the Taxpayer Assistance Division, North Carolina Department of Revenue, P.O. Box 25000, Raleigh, N.C. 27640-0001.

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IMPORTANT NOTICE: SALES AND USE TAX RATE CHANGE

I. INCREASE IN STATE SALES AND USE TAX RATE BY 1%

The General Assembly enacted legislation to temporarily increase the State rate of sales and use tax by 1%. The increase is effective September 1, 2009 and scheduled to expire July 1, 2011. Effective September 1, 2009, the general State rate of sales and use tax will increase from 4.5% to 5.5%. Taxable sales, purchases or services that are subject to the general State rate of tax are also subject to the 2.25% county tax in all counties except Alexander, Catawba, Cumberland, Haywood, Martin, Pitt, Sampson, and Surry where the county rate is 2.5% Mecklenburg County has an additional 0.5% county rate.

The combined rate will be 7.75% in ninety-one counties, 8% in Alexander, Catawba, Cumberland, Haywood, Martin, Pitt, Sampson, and Surry Counties, and 8.25% in Mecklenburg County. Tax charts are available on the Department's website at www.dornc.com.

Taxable sales, gross receipts, purchases and services that were subject to the 4.5% State rate of tax prior to September 1, 2009 will be subject to the 5.5% State tax on and after September 1, 2009 with the following exceptions:

- Gross receipts from the lease of tangible personal property that is delivered to a lessee prior to September 1, 2009 and leased for a definite stipulated period of time will continue to be subject to the 4.5% State tax and applicable county tax for the remainder of the lease.
- Construction materials purchased or sold on and after September 1, 2009 to fulfill a lumpsum or unit-price contract entered into or awarded prior to September 1, 2009, or entered into or awarded pursuant to a bid made prior to September 1, 2009, will continue to be subject to the 4.5% State tax and applicable county tax. Form E-589E, Affidavit to Exempt Contractors from the Additional 1% State Tax, must be executed by the contractor or subcontractor to obtain the 4.5% State rate. Form E-589E is available from the Department and on the Department's website at www.dornc.com.

A sale is complete when delivery is made to the purchaser. Therefore, except for circumstances such as those above, the increased rate of sales and use tax will apply to all taxable sales and purchases of property or services delivered on or after the effective date of September 1, 2009, irrespective of the date the order was placed.