

RHODE ISLAND DIVISION OF TAXATION

EXCERPTS FROM DRAFT REGULATION

JUNE 22, 2015

The following information from the Rhode Island Division of Taxation relates to proposed legislation involving a tax on the short-term rental of residential rental property, chiefly vacation rentals. The following information is in draft form and is subject to revision. It is based on legislation which, as of this writing, is pending before the Rhode Island General Assembly. The following information is not a substitute for Rhode Island General Laws or for Rhode Island Division of Taxation regulations or declaratory rulings.

RULE 5. DEFINITIONS

“Apartment hotel” means a building that consists of certain apartments or rooms for temporary occupancy by the day, week, or other short periods of time and also for permanent occupancy on a monthly, or other long term basis. The tax applies to the first period of not exceeding 30 consecutive calendar days on ALL rentals charged in such apartment hotels whether the rentals are for such temporary or such permanent accommodations unless as previously noted the occupant has a written lease covering a rental period of twelve months or more.

“Hotel” means any facility offering a minimum of three (3) rooms for which the public may, for a consideration, obtain transient lodging accommodations. The term "hotel" shall include hotels, motels, tourist homes, tourist camps, lodging houses, and inns. The term “hotel” shall also include houses, condominiums or other residential dwelling units regardless of the number of rooms, which are used and/or advertised for rent or occupancy. The term “hotel” shall not include schools, hospitals, sanitariums, nursing homes, and chronic care centers.

“Hosting Platform” means an electronic or operating system in which a person or entity provides a means through which an owner may offer and accept payment for a residential unit for transient use. This service is usually provided through an online or web-based system which generally allows an owner to advertise the residential unit through a hosted website and provides a means for a person or entity to arrange transient use in exchange for payment, whether the person or entity pays rent directly to the owner or to the hosting platform.

“Living quarters” means sleeping rooms, sleeping or housekeeping accommodations, or any other room or accommodation in any part of the hotel, rooming house or tourist camp which is available for or rented out for hire in the lodging of guests.

"Occupancy" means a person, firm or corporation's use of space ordinarily used for transient lodging accommodations not to exceed thirty (30) days. Excluded from "occupancy" is the use of space for which the occupant has a documented agreement for the space, which lease covers a rental period of twelve (12) months or more. Furthermore, any house, condominium or other residential dwelling rented, for which the occupant has a documented agreement for the space covering a rental period of more than thirty (30) consecutive days or for one calendar month, is excluded from the definition of occupancy.

"Owner" means any person who owns real property and is the owner of record. Owner shall also include a lessee where the lessee is offering a residential unit for transient use.

"Residential unit" means a room or rooms, including a condominium or a room or a dwelling unit that forms part of a single, joint or shared tenant arrangement in any building, or portion thereof, which is designed, built, and leased for non-commercial use.

"Room reseller" means any person except a tour operator having any right, permission, license, or other authority from or through a hotel to reserve, or arrange the transfer of occupancy, such that the occupant pays all or a portion of the rental and other fees to the room reseller.

"Rooming house" means every house, vehicle, motor court or other structure kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings.

"Tour operator" means a person that derives a majority of their revenue by providing tour operator packages.

"Tourist or transient" means any use of a residential unit for occupancy for less than a thirty (30) consecutive day term of tenancy, or occupancy for less than thirty (30) consecutive days of a residential unit leased or owned by a business entity.

"Tourist camp" means a place where tents or tent houses, or camp cottages, or cabins or other structures are located and offered to the public or any segment thereof for human habitation.

"Travel package" means a room or rooms bundled with one or more separate components of travel such as air transportation, car rental or similar items where the travel package is charged to the customer for a single retail price. When the room occupancy is bundled for a single consideration with other services and items, the entire single consideration shall be treated as the rental/fees for room occupancy.

"Usual places of abode" means regular, fixed and permanent residences as distinguished from temporary stopping or abiding places.

RULE 6. SALES TAX ON HOTELS AND OTHER ACCOMMODATIONS

(a) Sales tax liability

(i) Sales and use tax is imposed on the sale, storage, use, or other consumption in this state at the rate as provided in RIGL 44-18-18 and 44-18-20 on the rental charges for living quarters in hotels which include houses, condominiums, and other residential dwelling units used or advertised for rent or occupancy, motels, inns, tourist/lodging houses and tourist camps. Tax is imposed on the rental charges for the first thirty (30) consecutive calendar days of each rental period. Any break in occupancy results in the creation of a new and separate rental.

A break occurs when a guest terminates his occupancy by checking out or by transferring from one hotel to another hotel even though such hotels are operated by the same owner. The tax will apply to charges for such new and separate rentals in the same manner and to the same extent as though such guest had just checked in for the first time, and the 30 day taxable period starts all over. However, a mere change of rooms in the same hotel or motel, or in the same rooming house or in the same tourist camp does not constitute a break in occupancy.

(ii) Excluded from sales and hotel tax are rental charges for living quarters in hotels, rooming houses, or tourist camps for which the occupant has a documented agreement and the rental period is twelve (12) months or more. For leases less than twelve (12) months, the first thirty (30) consecutive days are subject to both sales and hotel tax.

(iii) For any house or room, condominium, and other residential dwelling rented, for which the occupant has a document agreement covering a rental period of more than thirty (30) consecutive days or one calendar month, this charge is excluded from the definition of occupancy and is therefore not subject to the sales or hotel tax.

(iv) Where a hotel rents a room designed as living quarters (i.e., a bedroom, suite, etc.) even though the room or suite is rented to a business for display or conference purposes, rental charges made for such accommodations will be subject to tax.

(v) A room reseller shall calculate both sales and hotel taxes upon the amount of rental and other fees paid by the occupant to the room reseller, less the amount of rental and other fees paid by the room reseller to the hotel. The hotel shall calculate both sales and hotel taxes upon the amount of rental and other fees paid to the hotel by the room reseller or the occupant. The hotel or room reseller shall add and collect from the occupant or the room reseller the full amount of the taxes imposed on the rental and other fees.

(vi) A travel package consisting of a single consideration for “bundled” travel charges shall be treated as the rental/fee for room occupancy and is subject to tax, even if the separate sale of certain bundled travel charges would otherwise not be subject to tax. Separately stated room occupancy charges and other travel charges are subject to tax based on the taxability of each individual item.

(vii) Every person advertising, managing or operating a hotel which includes houses, condominiums, and other residential dwelling units used or advertised for rent or occupancy, motel, rooming house or tourist camp, or who collects or receives rents on behalf of the owner or operator, is liable for the tax on such rentals. The tax shall be added to the total rental charge without an allowance for any commissions or fees received. All taxes collected constitute a trust fund.

Example # 1

When an individual rents the same hotel room for 35 consecutive days, the sales tax as provided in RIGL 44-18-18 and hotel taxes as provided in RIGL 44-18-36.1(a) and (b) must be added to the amount charged for the first 30 consecutive days of occupancy. Rental charges for the remaining 5 days will not be taxable. A hotel room occupancy for thirty (30) consecutive days or less (e.g. a day, a week, two weeks, etc.) is subject to sales and hotel tax on the full rental charge.

When a house or room, condominium, or other residential dwelling is rented to an occupant who has a documented arrangement for a rental period greater than thirty (30) consecutive days or for one month, there is no sales or hotel tax due on the rental charges. In this case the rental is excluded from the definition of "occupancy".

Example # 2

A college student rents a home for the nine (9) month period September through May. Since the rental period is greater than thirty (30) consecutive days there is no sales or hotel tax due on the rental charges.

Example # 3

A person rents their beach house for a three (3) month period June through August and the occupant has a documented arrangement. Since the rental period is greater than thirty (30) consecutive days there is no sales or hotel tax due on the rental charges.

A person rents their beach house in its entirety for individual two week periods in July and August. Since no rental period exceeds thirty (30) consecutive days, sales tax as provided in RIGL 44-18-18 and the local hotel tax as provided in RIGL 44-18-36.1(b) must be added to the amount charged for each rental period. Since the beach house is rented in its entirety, the hotel tax per RIGL 44-18-36.1(a) does not apply.

A person rents a room in their beach house for individual two week periods in July and August. Since no rental period exceeds thirty (30) consecutive days, sales tax as provided in RIGL 44-18-18 and hotel taxes as provided in RIGL 44-18-36.1(a) and (b) must be added to the amount charged for each rental period. A separately stated charge for a security deposit is not subject to tax.

A person rents their beach house in its entirety for individual two week periods in July and August. The renter has made a down payment of fifty (50) percent in May 2015 with the balance

due after July 1, 2015, when the rental period begins. Since the rental agreement was prior to the effective date of July 1, 2015 when certain rentals became taxable, the entire charge for the rental will be deemed to be prior to the effective date, and therefore is not subject to tax.

Example # 4

A person rents a room in their residential house through an online hosting platform. The rentals vary from a weekend to an entire week. Since the definition of a hotel includes residential dwellings and no rental period exceeds thirty (30) consecutive days, both sales tax as provided in RIGL 44-18-18 and hotel taxes as provided in RIGL 44-18-36.1(a) and (b) must be added to the amount charged for each rental period. The hosting platform is required to collect and remit the tax.

A person rents a room in their residential house through an online hosting platform. The rental period is for one month and the occupant has a documented arrangement. This rental is excluded from the definition of “occupancy”, therefore no sales or hotel tax is due on the rental charges.

Example #5

A hotel charges a room reseller \$100 for a room plus sales tax of \$7 and hotel tax of \$6. The room reseller arranges for the transfer of occupancy and charges the occupant \$150 for the room, sales tax of \$10.50 and hotel tax of \$9. The room reseller will calculate sales tax due as follows: \$10.50 collected less \$7 paid to the hotel equals \$3.50 sales tax due. Hotel tax is calculated in the same manner: \$9 collected less \$ \$6 remitted equals \$3 due.

Assume the same facts as above however the occupant has additional fees of \$50 for room service charged by the hotel. The hotel is responsible for charging and remitting the applicable sales and hotel tax to the occupant for the additional room service fees.