



COLORADO
Department of Revenue

Taxation Division

Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

GIL-16-013

July 6, 2016

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Hotel Thirty-Day Rule

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX (“Company”) a request for guidance regarding the applicability of sales tax to hotel rentals for periods of thirty days or greater.

The Colorado Department of Revenue (“Department”) issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department Rule 1 CCR 201-1, 24-35-103.5.

The Department treats this request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, the retailer can submit a request and fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

- 1) Does the guest need a written agreement in order to be exempt from sales taxes for the first thirty days?
- 2) Does the guest need to make payment for the full thirty days up front in order to qualify for an exemption for the first thirty days?
- 3) Does the exemption apply if a guest does not originally plan on staying for thirty days, but ultimately stays for thirty days or more? If so, does the exemption apply retroactively to the first thirty days of the stay or only to that part of their stay beyond thirty days?
- 4) Does any guest become exempt from sales taxes after thirty consecutive days of occupancy?

Background

Company manages a hotel that offers extended stay accommodations. The hotel caters to individuals who require temporary living accommodations while between homes or while working temporarily in the area, rather than to traditional vacationers. The hotel's customers often stay for more than thirty days. Hotel requires full payment in advance, offers no full or partial refunds for guests who check out prior to their scheduled check-out date, and allows guests to extend their stay beyond their scheduled check out date, provided arrangements are made prior to their registration expiration date.

Structure of Analysis

To determine whether the scenarios described by Company qualify for exemption under the thirty-day rule, the Department will examine the following questions:

- 1) Under what conditions does a guest qualify for the thirty-day rule and the sales tax exemption authorized by § 39-26-704(3), C.R.S. and Dept. Rules 39-26-102.11, 104.1(f) and 704.3?
 - a) What constitutes a written agreement sufficient to satisfy the requirement in 39-26-704(3), C.R.S.?
- 2) What responsibility does a hotel bear under §§ 39-26-104(1)(f) and 105, C.R.S. for collecting sales tax and for determining guest's eligibility for exemption?
- 3) How can a hotel or guest claim a refund for sales tax paid for a rental period that qualifies for exemption under § 39-26-704(3), C.R.S. and Department Rules 39-26-102.11, 104.1(f) and 704.3?

Discussion

Colorado¹ imposes sales tax on the entire amount charged for rooms and accommodations.² However, rooms or accommodations rented for thirty or more consecutive days are not subject to Colorado sales tax.³ Company requests guidance regarding the application of the tax, the exemption to the first thirty days of a guest's stay, and to payments made before or during a guest's stay.

Eligibility for the exemption hinges on the duration of the stay, but a written agreement is also required by statute.⁴ The written agreement need not bear any specific form and may include hotel registrations or rent receipts.⁵ Statute is ambiguous about whether a qualifying rental period must be covered by a single written agreement or can instead be established by multiple consecutive written agreements.⁶ Department regulations provide no greater

¹ The discussion in this General Information Letter pertains not only to Colorado sales taxes, but also to all sales taxes administered by the Department, including those for cities, counties, and special districts, as well as any applicable county lodging and local marketing district taxes.

² §§ 39-26-102(11) and 104(1)(f), C.R.S.

³ § 39-26-704(3), C.R.S., Dept. Rules 1 CCR 201-4, 39-26-102.11, 104.1(f), and 704.3

⁴ § 39-26-704(3), C.R.S.

⁵ Dept. Rule 1 CCR 201-4, 39-26-704.3

⁶ The exemption applies to an occupant "who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty consecutive days." § 39-26-704(3), C.R.S.

clarity on the matter.⁷ Nonetheless, a hotel must retain copies of such written agreements in its records and provide such documentation to the Department upon request to verify the exemption for any room charge for which sales tax was not collected.

Application of this exemption can present a challenge for hotels that require payment in advance because a guest's eligibility for the exemption cannot necessarily be determined at the commencement of the guest's stay. If a guest reserves a room for thirty or more consecutive days and remits a non-refundable payment in full up front, that guest's eligibility for the exemption is certain and no sales tax is due.⁸ However, if the initial reservation is for less than thirty days, the initial payment covers less than thirty days, or the initial payment is fully or partially refundable, it is uncertain whether the guest will ultimately qualify for the exemption. For example, the exemption would not be allowed if a partial cancellation of a reservation that was initially for more than thirty days ultimately reduced the rental period to less than thirty days. Conversely, under existing regulations, a guest who rented a room on a week to week basis and initially did not qualify for the exemption would qualify as soon as their stay exceeded 29 days. No tax would be due on such a guest's future weekly payments (provided their stay was continuous) and the guest would be entitled to a refund of the tax they paid over the first 29 days of their stay.

Hotel operators are afforded latitude in applying the exemption to up-front payments, but are nonetheless liable for collecting sales tax for any stay that is ultimately less than thirty days.⁹ Consequently, a hotel operator that elected not to collect sales tax on an up-front payment made by a guest, based on either that guest's reservation or expressed intention to stay for thirty or more days, would remain liable for the remittance of tax if that guest ultimately stayed for less than thirty consecutive days, regardless of whether the hotel operator was able to subsequently collect the tax from the guest.

Significantly, vendors in Colorado bear the burden of proof in demonstrating the applicability of an exemption to any sale for which tax was not collected.¹⁰ Upon request, the hotel operator must provide to the Department copies of hotel registrations, rent receipts, or other documentation to verify the exemption for any sale on which tax was not collected and remitted. A hotel operator who cannot document that the sale was exempt may be held liable for any sales tax that was not collected.

Finally, when any disagreement exists as to the taxability of a particular sale or the applicability of a particular exemption, the vendor must collect and the purchaser must pay

⁷ Department Rules 39-26-102.11 and 104.1(f) make no reference to the written agreement in articulating the exemption, stating "[a]ccommodations are exempt from taxation if rented for at least thirty consecutive days" and "[if] the rental period is for a term of thirty consecutive days or more...the rental paid is exempt," respectively. Department Rule 39-26-704.3 mentions the written agreement, but only to state that hotel registrations and rent receipts qualify as written agreements, while cancelled checks do not.

⁸ At the commencement of a guest's stay, the ultimate duration of the stay is generally uncertain, regardless of the length of the reservation because of the possibility that the guest may cancel a portion of the reservation. However, the duration of the rental period and the guest's eligibility for the exemption may be certain if three conditions are met: (1) the guest reserves a room for thirty or more consecutive days, (2) remits payment in full in advance, and (3) the full advance payment is nonrefundable. These three conditions, operating collectively, ensure the conditions of the exemption are met.

⁹ Vendors, including hotel operators, are responsible under Colorado law for the remittance of tax on all taxable sales, regardless of whether the tax was collected at the time of the sale. § 39-26-105(1)(a)(I)(A), C.R.S.

¹⁰ § 39-26-105(3), C.R.S. and Dept. Rule 1 CCR 201-4, 39-26-105.1(c)

the tax.¹¹ The vendor must provide the purchaser a receipt for use in any subsequent refund claim.¹² Thus, a hotel operator can ensure the proper satisfaction of their liability by collecting sales tax on any up-front payment when any uncertainty exists as to whether a guest will ultimately stay for at least thirty consecutive days.

In the event that sales tax is collected on any sale that is later determined to be exempt, there are multiple methods by which a refund can be claimed. A vendor who has refunded the tax paid to the guest may claim a credit on a subsequent return for a tax overpayment from a prior return.¹³ Alternately, the guest can request a refund directly from the Department using Form DR 0137B.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/tax for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Ken Schade
Colorado Department of Revenue
Office of Tax Policy Analysis

¹¹ §§ 39-26-102(22) and 703(1), C.R.S. and Dept Rule 1 CCR 201-4, 39-26-102.22

¹² Ibid.

¹³ Dept. Rule 1 CCR 201-4, 39-26-703.2(e). See FYI Sales 90 and the instructions for Form DR 100 for information about claiming a credit.