

REDACTED VERSION

November 15, 2012

[ address ]

RE: Formal Ruling #12-09

Dear [ redacted ]:

This is a formal ruling for [ Taxpayer ] regarding the applicability of rooms tax to a block of rooms reserved by an airline for its employees. This ruling is based upon representations in your letter of [date] and your email of [date], and the materials you enclosed with your letter.

**FACTS**

As we understand the facts, [Taxpayer] is a travel management company which handles hotel reservations for airlines for their crew members on layover between flights. [Taxpayer] wishes to arrange reservations for an airline with a hotel in Burlington, Vermont, to provide rooms for the airline's crew members. The number of rooms occupied by crew members will vary from night to night. Typically, crew members will occupy three rooms per night each month.

The wording of the proposed agreement is as follows:

Hotel shall set aside rooms, a minimum of 0 to a maximum of 16 rooms per day, specifically for the purpose of accommodating Airline crew. Airline will provide Hotel, no later than the 20th day of the preceding month, a room requirement flight schedule specifying the actual number of rooms required for crew layovers during the upcoming month. The number of rooms appearing on this schedule will be reserved and set aside by Hotel for Airline's use. [Taxpayer] and the Airline reserve the right to adjust the number of rooms based on Airline's anticipated needs.

The agreement does not specify the number of nights or rooms to be rented for the month, but ten days before the start of a month, Airline sends [Taxpayer] the upcoming month's schedule of rooms to be rented. Once the schedule is received, the hotel reserves the required number of rooms for Airline.

## DISCUSSION

You have asked for a ruling on the following questions:

- (a) When an organization such as an airline enters into a binding written contract for a block of rooms for 30 days or more, are there specific conditions, requirements or wording requested in the contract so that the organization qualifies for tax exemption due to continuous use of rooms?
- (b) May the rooms be sold as tax exempt from the first day? If not, is there any credit issued after 30 days?
- (c) Must the occupancy be in the same room for the entire period?
- (d) Must the same individual occupy the room for the entire period?
- (e) Is the entire tax exempt? If not, what percent?

Vermont imposes a rooms tax of nine percent upon every "occupancy." 32 V.S.A. § 9241(a).<sup>1</sup> In the case of a hotel, an "occupancy" does not include rental to a "permanent resident." A "permanent resident" is "any occupant who has occupied any room or rooms in a 'hotel' for at least 30 consecutive days." 32 V.S.A. § 9202(6), (7). In other words, once a guest completes a consecutive 30-day stay, the guest becomes a "permanent resident" on the thirty-first day. The first 30 days remain subject to the rooms tax, but beginning on the 31st day, no further rooms tax is due. The regulation defines a permanent resident as follows:

### Reg. § 1.9202(7)-1 "Permanent Resident" Defined

The term "permanent resident" includes:

A. Occupants for at least thirty (30) consecutive days. A person who occupies any room in a hotel for at least thirty (30) consecutive days becomes a permanent resident effective as of the thirty-first day and will continue to be considered a permanent resident thereafter as long as occupancy remains continuous and uninterrupted. Any discontinuance or interruption in occupancy results in the creation of a new and separate rental. A change of rooms in the same hotel will not be considered a discontinuance or interruption of occupancy. Transfer from one hotel to another operated under a different meals and rooms license, however, begins a new period of occupancy even when the hotels are owned by the same person or entity. Since qualification as a permanent resident under this subsection is not effective until the person has occupied a room or rooms in a hotel for thirty (30) consecutive days, rent for the first thirty (30) days of occupancy remains subject to meals and rooms tax.

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<sup>1</sup> Any occupancy subject to the State's rooms tax is also subject to any municipality's local-option, one-percent rooms tax, imposed in accordance with 24 V.S.A. § 138.

The Department's regulations provide that an "occupant" includes a person who does not actually occupy the room, but has a *right to use* the room. If, for example, a person paid for a room for 31 days, but never actually stayed in the room, the room rental beginning on the 31st day would be exempt from the rooms tax. In addition, the regulations provide that a business entity may be an "occupant" for purposes of the rooms tax:

Dept. of Taxes Reg. § 1.9202(5)-1 "Occupant" Defined

A. The term "occupant" includes any person who, for a consideration, uses, possesses, *or has a right to use* or possess any room in a hotel, whether or not the room contains sleeping accommodations or is to be used for that purpose.

\* \* \*

B. An occupant *may be a business entity*.

Example: A corporation rents a room or rooms, on a continual basis, in a hotel for use by its employees as the need arises. The occupant is the corporation, and it is immaterial that different employees may use the rooms.

Dept. of Taxes Reg. § 1.9202(5)-1 (emphasis added). As the regulations make clear, merely reserving a room is insufficient to count as an occupancy. To count as days of occupancy, the occupant must have paid for the room.

Since an occupant may be a business entity, Airline would be eligible for the "permanent resident" tax exemption if, for a consideration, it occupies or has the right to occupy a hotel room for more than 30 consecutive days. It would not matter if the hotel changed the reservation from one room to another during the 30 days, as long as Airline has the right to use some room in the hotel for 30 consecutive days. It would also be immaterial that different crew members - or no crew members - used the room during the 30 days. If the rental continues after 30 consecutive days, then no rooms tax would be due for the 31st day or thereafter. Since the rule requires 30 *consecutive* days, Airline may not meet the 30-day test by combining *concurrent* rentals of two or more rooms on the same days.

A hotel room may be exempt from the rooms tax from the first day of rental if the rental is pursuant to a pre-existing true lease which creates a landlord-tenant relationship:

Reg. § 1.9202(7)-1 "Permanent Resident" Defined

B. Tenants under leases covering at least thirty (30) days. A person who has a right to occupy a room pursuant to a pre-existing lease for at least thirty (30) consecutive days, or one calendar month, whichever is less, is considered a permanent resident for the entire period of occupancy pursuant to the lease. Accordingly, no meals and rooms tax is payable with respect to any rent paid or received under the lease. If the lease is broken and actual occupancy is for less than thirty (30) days, or in the case of the month of February, less than the

calendar month, such person will not be considered a permanent resident for any portion of the occupancy.

For purposes of this regulation, a lease is an oral or written agreement that creates a landlord-tenant relationship between the parties. A lease must contain the essential terms of the agreement, and transfers the right of exclusive possession to the tenant. A lease is distinguishable from a license or contract to occupy in which a hotel owner or operator retains rights of possession and care of the premises, and may revoke the occupancy at his or her pleasure.

The Airline's agreement with the hotel as you have described it would not qualify as a pre-existing true lease, since the hotel would presumably retain the rights of possession and care of the premises, and Airline would not be entering into a binding landlord-tenant relationship with the hotel.

Based upon the foregoing, the answers to your questions are as follows:

*(a) When an organization such as an airline enters into a binding written contract for a block of rooms for 30 days or more, are there specific conditions, requirements or wording requested in the contract so that the organization qualifies for tax exemption due to continuous use of rooms?*

There is no specific contract language required to qualify for the "permanent resident" exemption beginning with the 31st day of occupancy, so long as Airline paid for and used, possessed or had the right to use or possess a room in the hotel during the prior 30 consecutive days. To satisfy these requirements, the Airline, and not the employees, must pay for the rooms. In addition, the 30 days must be consecutive, so Airline may not combine concurrent rentals of two or more rooms on the same days. For example, three rooms rented for the same 10 days each would not result in 30 consecutive days' occupancy.

*(b) May the rooms be sold as tax exempt from the first day? If not, is there any credit issued after 30 days?*

A room would only be tax exempt from the first day if rented pursuant to a pre-existing true lease, as described above. Since this is not the arrangement Airline will have with the hotel, the rooms will be taxed for the first 30 days.

*(c) Must the occupancy be in the same room for the entire period?*

As noted above, the occupancy need not be in the same room, so long as Airline pays for and uses or has the right to use *some* room for 30 consecutive days.

*(d) Must the same individual occupy the room for the entire period?*

No. The "occupant" is Airline, and it is immaterial that different crew members may use Airline's room during the rental period.

*(e) Is the entire tax exempt? If not, what percent?*

The first 30 days remain subject to rooms tax. If rental of the room continues for 30 consecutive days, then the 31st day and any following consecutive days will be 100 percent exempt from rooms tax.

**GENERAL PROVISIONS**

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to determine the department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.

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Emily Bergquist

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Date

Approved:

\_\_\_\_\_  
Mary N. Peterson  
Commissioner of Taxes

\_\_\_\_\_  
Date