

REDACTED VERSION

Re: Formal Ruling 13-03

Dear [Taxpayer]:

This is a formal ruling for [Taxpayer] regarding the applicability of rooms tax to your proposed \$1.00 per room charge. This ruling is based upon representations in your letter received by email dated [date].

RULING

Based upon the facts presented, the proposed \$1.00 fee would be subject to Vermont's rooms tax. [Taxpayer] would be liable for collecting and remitting the tax.

FACTS

The [Taxpayer] is a member of the Vermont Convention Bureau (VCB), which is a subsidiary of the Lake Champlain Regional Chamber of Commerce. [Taxpayer] will add a \$1.00 per room charge to each guest's bill. The \$1.00 charge will appear on the bill below the line labelled "Total." The amount collected from this \$1.00 charge will be sent by [Taxpayer] to VCB to fund its marketing of Vermont as a meeting and convention destination. The \$1.00 charge is voluntary.

DISCUSSION

You have asked for a ruling on whether the \$1.00 fee will be subject to Vermont rooms tax, and if so, whether [Taxpayer] or VCB will be responsible for paying the tax.

Vermont imposes a rooms tax of nine percent on the "rent" charged for "occupancy" in a hotel:

Imposition of tax

(a) An **operator** shall collect a tax of nine percent of the **rent** of each occupancy.

32 V.S.A. § 9241(a) [emphasis added].

An "operator" is the person operating the hotel:

(4) "Operator" means any person, or his or her agent, operating a hotel, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee or otherwise; and any person, or his or her agent, charging for a taxable meal; and any person, or his or her agent, engaged in both of the foregoing activities. In the event that an

operator is a corporation or other entity, the term "operator" shall include any officer or agent of such corporation or other entity who, as an officer or agent of the corporation, is under a duty to pay the gross receipts tax to the commissioner as required by this chapter.

32 V.S.A. § 9202(4). In this context, [Taxpayer] or its agent is operating the hotel, and is required to collect the tax. VCB is not operating the hotel and would not be the person required to collect the tax.

If the hotel operator fails to collect the tax and remit it to the State, the operator becomes liable for the tax:

Taxes as personal debt to state; action to collect taxes; limitations

(a) Any operator who fails to collect the required tax or to pay it to the commissioner as required under this chapter shall be **personally and individually liable** for the amount of such tax together with such interest and penalty as has accrued under the provisions of section 3202 of this title; and if the operator is a corporation or other entity, the personal liability shall extend and be applicable to any officer or agent of the corporation or entity who as an officer or agent of the same is under a duty to collect the tax and transmit the tax to the commissioner as required in this chapter.

32 V.S.A. § 9280(a) [emphasis added].

The "rent" subject to the rooms tax includes not only the stated room charge, but also includes any other consideration which the guest is required to pay for the room:

(8) "**Rent**" means **the consideration received** for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also **any amount for which the occupant is liable for the occupancy** without any deduction therefrom whatsoever

32 V.S.A. § 9202 [emphasis added].

Your letter states that the fee is voluntary. It was not clear whether this meant that the VCB fee to its members is voluntary, or that the [redacted] guest fee will be voluntary.

If the VCB fee is a voluntary contribution by [Taxpayer] to the VCB, that will not affect the taxability of the \$1.00 charge to your [redacted] guests. In essence, [Taxpayer] would be charging each guest an additional \$1.00 for the room, which [Taxpayer] then would voluntarily choose to spend by contributing it to VCB to fund VCB's tourism marketing costs. This result is no different than if [Taxpayer] assessed each guest a separately-stated \$1.00 to cover the cost of [Taxpayer's] own advertising expenses or any other operating expenses.

If [Taxpayer] charges a \$1.00 fee and allows the guest to ask to remove the charge, it will not be considered a voluntary charge, and if paid, will still be subject to the rooms tax.

If the guest is given the option of paying an additional \$1.00 to [Taxpayer], the \$1.00 would still be subject to the rooms tax when paid, because it would still constitute consideration received for occupancy. Again, this is just [Taxpayer] collecting a \$1.00 from the guest to cover one of [Taxpayer's] operating expenses, viz., [Taxpayer's] own payment to VCB.

The \$1.00 would only be exempt from the rooms tax if [Taxpayer] states clearly on the bill that the guest may check a box, or otherwise affirmatively choose, to make a \$1.00 donation to the VCB. If the guest affirmatively opts to make the VCB donation, [Taxpayer] must transfer the \$1.00 to the VCB, and [Taxpayer] may not use the \$1.00 to pay [Taxpayer's] own obligation or donation to the VCB. The [redacted] guest would have made a \$1.00 charitable donation to the VCB.

The regulations define "rent" to exclude hotel charges for optional services, but to include additional charges that are mandatory or "intrinsic":

The charges for services, such as laundry service, and for facilities, such as the use of a swimming pool or exercise room, that are optionally available to hotel occupants at an extra charge do not constitute rent provided the charges are separately stated and itemized on the customer's bill or invoice. If the charges for any services or the use of facilities are not itemized, or the services or facilities are available without any charge in addition to that normally made for the room, the total amount charged is considered rent and is subject to meals and rooms tax.

Additional charges for items that are intrinsic to the occupancy are considered rent and are subject to the tax, even if such items are separately stated on the bill. Examples of such charges include, but are not limited to, charges for a lake or mountain view room, local telephone usage charges, the use of an extra bed or crib, the use of a safe, pet charges, and hotel or inn closure fees entitling occupants to exclusive use of the property. Itemized charges for the optional use of facilities, such as a pool or fitness center, or for access to items such as rental movies or cable television, may be subject to sales tax under 32 V.S.A. § 9771(4).

Department of Taxes Regulation § 1.9202(8)-1. Except where the guest is allowed to make an affirmative VCB donation, the \$1.00 fee when paid would be "intrinsic" to the occupancy, because it is not charged for identified, optional, extra service of any kind, and simply constitutes additional operating revenue for [Taxpayer].

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.

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808,815.

Emily Bergquist

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date