



Office of the Madison City Clerk

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To: All City of Madison Hotel & Motel Operators
From: Maribeth Witzel-Behl, Madison City Clerk
Date: February 27, 2007
Subject: Room Tax Exemptions

There may have been confusion in the past regarding application of the room tax, particularly concerning who is exempt from paying the tax (those from whom the innkeeper need not collect the tax). This memorandum will clarify the exemptions as interpreted by the Wisconsin Department of Revenue.

The room tax applies to facilities commonly understood to be hotels and motels and specifically excludes accommodations furnished by hospitals, sanitariums, nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes provided that no part of the net earnings of such corporations or associations inures to the benefit of any private shareholder or individual. The tax also may apply to internet companies selling rooms in Madison. See Opinion #06-001 of the Madison City Attorney.

The room tax is imposed on the entity furnishing the lodging; it is not imposed on the person renting the room, even though the innkeeper passes the tax on to the renter. The innkeeper or other furnishing entity is obligated to pay the tax whether or not it is successfully collected from the renter. However, the room tax is not subject to the sales tax. Hotel and motel operators or others furnishing rooms must pay the tax except in the following instances:

- ♦ Rentals for a continuous period of 30 or more consecutive days (or nights) for which room rents are collected where the same tenant (i.e., one person or family unit) occupies the room;
- ♦ Rentals to the Federal and Wisconsin State government and their agencies and instrumentalities (e.g., U.W., boards, commissions, school districts, sewerage districts, and other counties, cities, towns and villages) and any Wisconsin or other state's corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals (except hospital service insurance corporations), no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation, and the employees of all such institutions.

In order for the rental of a room to such governmental agencies or non-profit organizations to be exempt from the room tax, the following three conditions must occur.

1. The operator issues the billing or invoice for the lodging in the name of the

exempt entity.

2. The retailer receives from the exempt entity:
 - a. A purchase order, or similar written document such as a Letter of Authorization, or payment by a government check or government credit card, **if the exempt entity is a governmental agency**, or
 - b. The Certificate of Exempt Status number of the exempt entity **if it is a non-profit organization described above**. The operator must enter this exempt status number on the operator's copy of the invoice or billing document.
3. The operator keeps a copy of the documents mentioned above to substantiate that the room rental was exempt from the room tax.

Note: The tax status of out-of-state institutions and organizations requires special attention. State sponsored universities, colleges, vocational/technical institutions and the like are exempt as educational institutions. Private schools and colleges must establish that they are non-profit in order to be exempt. The other non-profit organizations listed above also must establish their exempt status before operators need not pay the room tax on these rentals. This can be established by the presentation of a Certificate of Exempt Status number from their home state or one from the Wisconsin Department of Revenue, form S207, available from that Department. Operators are encouraged to have that form available so representatives from these institutions may fill them out at their establishments.

All of the requirements given in 1, 2 and 3 above must be met. The following examples are meant to highlight and clarify different situations that may arise.

Examples

1. An airline reserves a room at a hotel for a six-month period, during which period various employees occupy the room. *This is **not** exempt because the same tenant does not occupy the room. This **is** subject to room tax even though it may not be subject to sales tax, because the room tax statutes' definition of "transient" does **not** include rooms rented by an airline or similar business.*
2. A family reserves a room for a six-month period, during which period the husband and wife occupy the room at various times. *This is exempt because a family unit is considered one tenant.*
3. An employee of the State of Wisconsin purchased lodging in a motel. **The billing is made in the employee's name** and the employee pays the bill with his or her own funds. The employee is subsequently reimbursed by the State for the amount of lodging. *This is **not** exempt because it is a sale to the employee, rather than to the State. Note: This lodging rental would still be taxable even if the employee submitted a letter from the State indicating that it would ultimately be responsible for the cost of the rental.*
4. An Illinois State employee pays rent with an Illinois governmental check. *This is **not** exempt because the exemption does not apply to governmental entities of other states.*
5. A high school from Green Bay pays room rent with its own funds for a group of student athletes, coaches, band members, and cheerleaders who are actively

- engaged in a school-sponsored activity. *This is exempt because the school has paid directly for participants in a school-sponsored activity.*
6. A high school from Kenosha pays room rent for a group of spectators, who subsequently reimburse the high school. *This is **not** exempt because the individuals are ultimately paying the room rent. If there were no reimbursement by the spectators, this would be exempt as in Example 5.*
 7. The University of Colorado (a state-sponsored educational institution) pays room rent for a group of student athletic recruits. *This is exempt because it is a state-sponsored educational institution. An out-of-state private school must establish that they are non-profit in order to be exempt.*
 8. Friends of XYZ, a Wisconsin or other state's charitable organization exempt from paying sales tax, pays room rent for an employee on a business trip, and provides its Certificate of Exempt Status number. *This is exempt because exemption from the State sales tax extends to exemption from the room tax and because it is a charitable organization. However, without the Certificate number, the operator should collect the tax because it cannot comply with the documentation requirements.*
 9. An employee of a church purchases lodging and gives the operator the Certificate number of the church. The **billing is in the name of the church** and the church directly pays the operator for the room rent. *This is exempt from the room tax because the sale is considered to be made to the church, rather than to the employee. The operator must record the church's Certificate number on the billing to substantiate that the rental was to the church. This would still be exempt if the employee, rather than the church, paid the operator and was subsequently reimbursed by the church because the billing is in the name of the church.*
 10. A Wisconsin village employee, when renting a room, submits a letter to the operator from the village indicating that the employee is on village business and that the village authorizes the employee to purchase lodging relating to the village's business. This letter is placed in the operator's file. The operator makes out the bill in the name of the village. The employee pays the bill with his or her own funds and is subsequently reimbursed by the village. *This is exempt as a rental to the village.*
 11. An employee of the federal government rents a room. The employee provided the operator with a letter from the federal agency (which is placed in the operator's file), indicating the employee is traveling on agency business and the agency is responsible for payment of the employee's expenses. The billing is made out to the federal agency. The employee uses a travel advance or personal credit card or cash to pay for the room. *This sale is exempt because it is considered a sale to the federal agency, not because of the method of payment.*

Documentation for audit purposes must be maintained for all exemptions that are granted by the operator. If you have questions relating to the room tax, please call the City Treasurer's Office at 266-4773.

4.21 ROOM TAX.

- (1) In this section:
 - (a) "Hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, bed and breakfast establishments, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except accommodations, including mobile homes as defined in Sec. 66.0435(1)(d), rented for a continuous period of more than one month and accommodations furnished by any hospital, sanitariums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual. (Am. by Ord. 11,240, 4-28-95)
 - (b) "Gross receipts" has the meaning as defined in Wisconsin Statutes, Section 77.51(4)(a), (b) and (c) insofar as applicable. (Am. by Ord. 11,240, 4-28-95)
 - (c) "Transient" means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public.
- (2) Pursuant to Wisconsin Statutes, Section 66.0615, a tax is hereby imposed on the privilege and service of furnishing, at retail, except sales for resale, rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations. Beginning January 1, 2007, such tax shall be at the rate of nine percent (9%) of the gross receipts from such retail furnishing of rooms or lodgings. The proceeds thereof shall be subject to annual appropriation by the Common Council. Such tax shall not be subject to the selective sales tax imposed by Wis. Stats. Section 77.52(2)(a)1. and may not be imposed on sales to the federal government and persons listed under Sec. 77.54(9a), Wis. Stats. (Am. by Ord. 11,503, 1-5-96; Ord. 12,311, 1-26-99; ORD-06-00159, 11-21-06)
- (3) Collection of Tax . This section shall be administered by the City Treasurer. The tax imposed for the months of January, February, and March, 1969, and for each calendar quarter thereafter is due and payable on the last day of the month next succeeding the calendar quarter for which imposed. A return shall be filed with the City Treasurer, by those furnishing at retail such rooms and lodging, on or before the same date on which such tax is due and payable. Such return shall show the gross receipts of the preceding calendar quarter from such retail furnishing of rooms or lodging, the amount of taxes imposed for such period, and such other information as the City Treasurer deems necessary. Every person required to file such quarterly return shall, with his first return, elect to file an annual calendar year or fiscal year return. Such annual return shall be filed within ninety (90) days of the close of each such calendar or fiscal year. The annual return shall summarize the quarterly returns, reconcile and adjust for errors in the quarterly returns, and shall contain certain such additional information as the City Treasurer requires. Such annual returns shall be made on forms as prescribed by the City Treasurer. All such returns shall be signed by the person required to file a return or his duly authorized agent, but need not be verified by oath. The City Treasurer may, for good cause, extend the time for filing any return, but in no event longer than one month from the filing date. (Am. by Ord. 7164, 12-17-80)
- (4) Every person furnishing rooms or lodging under Subsection (2) shall file with the City Treasurer an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the City Treasurer and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business, and such other information as the City Treasurer requires. The application shall be signed by the owner if a sole proprietor and, if not a sole proprietor, by the person authorized to act on behalf of such sellers. At the time of making an application the applicant shall pay to the City Treasurer a fee of two dollars (\$2) for each permit.
- (5) After compliance with Subsection (4) and Subsection (14) by the applicant, the City Treasurer shall grant and issue to each applicant a separate permit for each place of business within the City. Such

permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

- (6) Whenever any person fails to comply with this section the City Treasurer may, upon ten (10) days notification and after affording such person the opportunity to show cause why his permit should not be revoked, revoke or suspend any or all of the permits held by such person. The City Treasurer shall give to such person written notice of the suspension or revocation of any of his permits. The City Treasurer shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this section. A fee of two dollars (\$2) shall be imposed for the renewal or issuance of a permit which has been previously suspended or revoked.
- (7) If any person liable for any amount of tax under this section sells out his business or stock of goods or quits the business, his successors or assigns shall withhold a sufficient amount of the purchase price to cover such amount until the former owner produces a receipt from the City Treasurer that it has been paid or a certificate stating that no amount is due. If a person subject to the tax imposed by this section fails to withhold such amount of tax from the purchase price as required, he shall become personally liable for payment of the amount required to be withheld by him to the extent of the price of the accommodations valued in money. (Am. by ORD-06-00159, 11-21-06)
- (8) The City Treasurer may, by office audit, determine the tax required to be paid to the City or the refund due to any person under this section. This determination may be made upon the basis of the facts contained in the return being audited or on the basis of any other information within the City Treasurer's possession. One or more such office audit determinations may be made of the amount due for anyone or for more than one period.
- (9) The City Treasurer may, by field audit, determine the tax required to be paid to the City or the refund due to any person under this section. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information within the City Treasurer's possession. Whenever the City Treasurer has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, the City Treasurer is authorized to examine and inspect the books, records, memoranda, and property of any person in order to verify the tax liability of that person or of another person. Nothing herein shall prevent the City Treasurer from making a determination of tax at any time. (Am. by Ord. 8895, 6-26-86)
- (10) If any person fails to file a return as required by this section, the City Treasurer shall make an estimate of the amount of the gross receipts under subsection (2). Such estimate shall be made for the period for which such person failed to make a return and shall be based upon any information which is in the City Treasurer's possession or may come into his possession. On the basis of this estimate the City Treasurer shall compute and determine the amount required to be paid to the City, adding to the sum thus arrived at a penalty equal to ten per cent (10%) there-of. One or more such determinations may be made for one or more than one period.
- (11) A forfeiture of 25% of the room tax due for the previous year or \$5,000, whichever is less, of the tax imposed, is hereby established and due and owing in the event that the room tax is not paid within 30 days after the due date of return. In addition to this forfeiture, all unpaid taxes under this section shall bear interest at the rate of twelve per cent (12%) per annum from the due date of the return until the first day of the month following the month in which the tax is paid or deposited with the City Treasurer. All refunded taxes shall bear interest at twelve per cent (12%) per annum from the due date of the return until the first day of the month following the month in which said taxes are refunded. An extension of time within which to file a return shall not operate to extend the due date of the return for purposes of interest computation. If the City Treasurer determines that any overpayment of tax has been made intentionally or by reason of carelessness or neglect, or if the tax which was overpaid was not accompanied by a complete return it shall not allow any interest thereon. (Am. by Ord. 11,292, 7-11-95)
- (12) Delinquent tax returns shall be subject to a twenty-five dollar (\$25) late filing fee. The tax imposed by this section shall become delinquent if not paid by the due date of the return. (Am. by Ord.

8895, 6-26-86)

- (13) If a person files a false or fraudulent return with the intent in either case to defeat or evade the tax imposed by this section, a penalty of fifty percent (50%) shall be added to the tax required to be paid, exclusive of interest and other penalties. (Am. by Ord. 8895, 6-26-86)
- (14) In order to protect the revenue of the City, the City Treasurer may require any person liable for the tax imposed by this section to place with him or her, before or after a permit is issued, such security, not in excess of five thousand dollars (\$5,000) as the City Treasurer determines. If any taxpayer fails or refuses to place such security, the City Treasurer may refuse or revoke such permit. If any taxpayer is delinquent in the payment of the taxes imposed by this section, the City Treasurer may, upon ten (10) days notice, recover the taxes, interest and penalties from the security placed with the City Treasurer by such taxpayer. No interest shall be paid or allowed by the City to any person for the deposit of such security. (Am. by Ord. 11,240, 4-28-95)
- (15) Every person liable for the tax imposed by this section shall keep or cause to be kept such records, receipts, invoices and other pertinent papers in such form as the City Treasurer requires.
- (16) All tax returns, schedules, exhibits, writings or audit reports relating to such returns, on file with the City Treasurer are deemed to be confidential, except the City Treasurer may divulge their contents to the following, and no others:
 - (a) The person who filed the return.
 - (b) Officers, agents, or employees of the Federal Internal Revenue Service or the State Department of Revenue.
 - (c) Officers, employees, or agents of the City Comptroller. (Am. by Ord. 8762, 12-31-85)
 - (d) Such other public officials of the City of Madison, when deemed necessary.
- (17) No person having an administrative duty under this section shall make known in any manner the business affairs, operations or information obtained by an investigation of records of any person on whom a tax is imposed by this section, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof to be seen or examined by any person, except as provided in subsection (16).
- (18) Any person who is subject to the tax imposed by this section who fails to obtain a permit as required in subsection (4), or who fails or refuses to permit the inspection of his records by the City Treasurer after such inspection has been duly requested by the City Treasurer, or who fails to file a return as provided in this section, or who violates any other provisions of this section, shall be subject to a forfeiture not to exceed two hundred fifty dollars (\$250). Each day, or portion thereof, that such violation continues is hereby deemed to constitute a separate offense. The total forfeiture imposed shall not exceed 5% of the tax imposed by this section. (Am. by Ord. 8895, 6-26-86)



City of Madison Application for Transient Room Permit

Answer all questions completely. Please type or print. Return completed application to:
City Treasurer, 210 Martin Luther King, Jr., Blvd., Room 107, Madison, WI 53703.

Name of establishment seeking permit: _____

Address of establishment: _____

True name and address of business
(if different from above):

Send the Quarterly Return Form to
(if different from above):

_____	_____
_____	_____
_____	_____

Legal Organization: Sole Proprietor Partnership Corporation LLP LLC

Wisconsin Sellers Permit Number _____

Number of room/units available for rent _____

20____ receipts from room rent only \$ _____

Percent of non-transient occupancy _____%

Average rate for occupied rooms \$ _____

Average annual percent of occupancy _____%

Room Rate Schedule (attach copy if available)	
Amount	Per Unit
\$	
\$	
\$	
\$	

Check one:

- My business is subject to the Madison Transient Room Tax and I am enclosing a check for \$2.00 for a Transient Room Permit.
- My business is not subject to the Madison Transient Room Tax.

I hereby certify that the answers to the above statements are correct to the best of my knowledge and belief.

Signature of owner or authorized agent _____

Print name of owner/authorized agent _____

Title _____ Date _____

City Treasurer Use Only			
Date Received	Receipt Number	Permit Number	Date Permit Issued



**Hotel/Motel and Rooming House Operators,
or Others Subject to the Room Tax:**

As a customer service, the City Treasurer would like to fax a reminder to you approximately ten (10) days before the Room Tax payment is due. Non-receipt of this fax would not release you from payment deadline requirements.

Indicate your preference below and return this form with your permit application.

Sincerely,

Maribeth Witzel-Behl
Madison City Clerk

I do not wish to receive a fax reminder.

I would like to receive a fax reminder.

Attn: _____
Please print.

Fax Number: ____ (____) _____
Area code and number

Contact person and phone number for any problems with fax transmission:

_____ (____) _____
Contact person Phone number