

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-M-92(7)S
Sales Tax
December 7, 1992

**PROVIDERS OF BED AND BREAKFAST SERVICES
REQUIRED TO COLLECT SALES TAX**

The purpose of this memorandum is to set forth the sales tax responsibilities of a person, such as a host of a bed and breakfast or guest house who provides a service similar to that provided by hotels and motels (i.e., lodging of guests).

The New York State Tax Law imposes a sales tax on the rent charged for every occupancy of a room or rooms in a hotel, motel or similar establishment. The phrase, "similar establishment" includes places like apartment hotels, boarding houses, resorts, ski lodges, dude ranches, and any other place regularly used for the lodging of guests.

A bed and breakfast facility or guest house is another type of establishment that is similar to a hotel or motel, and the host of such an operation is therefore considered to be providing a hotel or motel service. Accordingly, any charge made by or on behalf of the host for occupancy in such a facility is subject to sales tax. Persons who provide lodging in a guest house or bed and breakfast facility have a number of obligations under the Tax Law in connection with the collection of sales tax.

Registration

An operator or host of a bed and breakfast or guest house must file a Certificate of Registration with the Tax Department and obtain a Certificate of Authority to collect sales tax. For the typical bed and breakfast or guest house operation, the operator would be the person who owns/runs the premise where the guests are lodged. In a bed and breakfast registry operation, the operator would be the person (host) who lists his/her lodging with the registry. A bed and breakfast registry is a type of referral agency. Generally, a person who has a spare room or other space in their home or apartment, who is looking to supplement their income by taking in guests, lists the availability of such room or space with the bed and breakfast registry. Persons interested in staying in such places contact the registry, and the registry, in turn, puts the two parties together for a fee or commission.

EXAMPLE (1)

Mr. and Mrs. A live in a large single family home near the seashore. During the summer and at other times during the year when tourists are likely to be in the area, Mr. and Mrs. A put a sign on the lawn advertising rooms for rent. Mr. and Mrs. A are operating a guest house and are required to register with the Tax Department.

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EXAMPLE (2)

The owner of a condominium apartment in a large city lists his/her apartment with a bed and breakfast registry. As stipulated by the owner, the apartment is listed as available for one-night or two-night stays on weekends only. The apartment owner is selling occupancy and is required to register with the Tax Department.

Recordkeeping and Separate Statement of Tax

The Tax Law provides that every person required to collect sales tax must retain true and accurate records of each sale of tangible personal property or service and every charge for occupancy. These records must include a true copy of the sales slip, invoice, receipt, statement, guest check, cash register tape or other original sales document given to the customer and must be retained for a period of at least three years. Each sales slip, guest check, etc. must provide sufficient detail to identify the individual item, service or occupancy sold, the selling price of each item, service or occupancy and a separate statement of the amount of sales tax (clearly identified as such) charged. These requirements must be adhered to regardless of the business practice employed by the host who, by law, must retain the records. Hosts who sell occupancy through a bed and breakfast registry must keep records of every sale (in the manner described above) even if the registry collects all fees and issues all receipts. The host must make arrangements with the registry to obtain these receipts in order to meet his/her obligations under the Tax Law.

EXAMPLE (3)

When Mr. and Mrs. A in example (1) rent one of their rooms they are required under the Sales Tax Law to keep a record of that transaction. On the written receipt or other memorandum of sale (a sample is depicted below) given to the customer, the host must show the amount of the charge to the customer and a separate itemization of the amount of sales tax charged.

(Sample receipt)

One night rental	\$85.00
Sales tax (assume 8 ½ %)	<u>7.23</u>
Total due	\$92.23

In addition Mr. and Mrs. A must retain a copy of such receipt for a period of at least three years.

EXAMPLE (4)

Suppose the bed and breakfast registry used by the condominium owner in Example (2) collects the rents on behalf of the owner. The receipt given by the registry must comply with the requirement for the separate statement of tax. And in addition, the owner must also insure that he/she receives a copy of such receipt from the registry so he/she can be in compliance with the requirement to retain records.

Collection and Payment of Tax

The Tax Law provides that every person required to collect tax must collect the tax from the customer when collecting the price to which it applies. Furthermore, such person is personally liable for any tax required to be collected that is not collected, as well as any tax collected and not paid over to the Tax Department. Payment of the tax collected and/or required to be paid over to the Tax Department is accomplished through the filing of the Sales and Use Tax Return. The frequency of filing is determined by the amount of taxable receipts generally reported by the filer. A return must be filed whether or not any tax is due or payable during the period covered by such return.

The host who sells occupancy through a bed and breakfast registry is the person who is required to collect the tax and file sales and use tax returns. Accordingly, if a host enters into an agreement with a bed and breakfast registry, whereby the registry collects all charges from the customer (including the sales tax), and, in turn, passes the money collected (less fees and/or commissions) to the host, it is the host's obligation to pay over the full amount of the tax collected by the registry (without any deduction) with the filing of their sales tax return. Since failure to file a sales tax return will result in the assessment of penalties against the host, the host must insure that a return is filed even if no sales of occupancy are made during a particular filing period.

EXAMPLE (5)

The registry used by the condominium owner in Example (2) makes a sale of occupancy on behalf of said owner. The registry issues the following receipt to the customer and forwards \$166.90 (the registry retains a \$15.00 service fee) and a copy of the receipt to the owner.

2 nights stay @ \$85.00 per night	\$170.00
Sales tax (assume 7% tax rate)	<u>11.90</u>
Total amount due	\$181.90

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The owner is required to report this sale on his/her sales tax return as \$170.00 and pay over the total amount of sales tax indicated on the receipt. Though the condominium owner receives only \$155.00 of the sales price, the occupancy charge to the customer (the amount subject to tax) was \$170.00; the service fee retained by the registry does not lessen the amount of sales tax required to be paid over to the Tax Department.

It should be noted that in all instances where a fee, commission, service charge, etc., is added to the bill for occupancy, by or on behalf of a bed & breakfast registry or similar agency, such charge must be included in the amount of the taxable receipt even if this fee is separately stated from the amount of the room charge.

EXAMPLE (6)

Suppose the receipt in Example (5) was written as follows:

2 nights stay	\$155.00
Registry fee	15.00
Sales tax @ 7%	<u>11.90</u>
Total amount due	\$181.90

The sales tax must be calculated upon the total amount of the charge to the customer regardless of whether the registry fee is separately stated from the room charge.

The rate of sales tax required to be collected on charges for occupancy is determined by the combined state and local sales tax rate in effect at the physical location (taxing jurisdiction) where the rented room is located. In addition to the sales tax, there is a 5% special occupancy tax on rooms costing \$100 or more a day (see TSB-M-91(3)(S)); and in the area of the state designated as the Hudson River Valley Greenway, there is an additional fee of 2/10% imposed on the daily charge (see Important Notice N-92-5). If applicable, the 5% additional tax, the 2/10% fee, or both, must be collected along with the sales tax. The payment and reporting of these taxes and fees is accomplished through the sales and use tax return.

EXAMPLE (7)

A room is rented through a bed & breakfast registry for three nights @ \$105.00 per night. The room is located within the Hudson River Valley Greenway in a county having a 7% tax rate. The bill to the customer would contain the following charges:

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3 nights @ \$105.00 per night	\$315.00
7% sales tax	22.05
5% special occupancy tax*	15.75
Greenway fee*	.63
Total amount due	\$353.43

* Sales tax is not computed on these other taxes and fees. Likewise, these other taxes and fees are not computed on the sales tax.

Exceptions From the Sales Tax

The sales tax on occupancy does not apply to a permanent resident of a room. For the purpose of applying the sales tax, a permanent resident is defined as a person who occupies a room (in a hotel, motel, inn, bed and breakfast facility, etc.) for at least 90 consecutive days (180 days in New York City). Since it is not possible to determine whether a guest will become a permanent resident at the time of the initial occupancy, the host must collect sales tax on the charge for the room until such time as the guest attains the minimum consecutive day occupancy requirement. Once the minimum requirement for permanent occupancy is met, the host may provide the guest with a refund or credit of the sales tax collected to date. The host may then recover the sales tax that was previously turned over to the Tax Department by taking a credit for such amount on his/her sales tax return. In the alternative, the occupant may file a claim for refund (Form AU.11) directly with the Tax Department. After the guest has established that he or she is a permanent resident, the host is relieved of the obligation to collect sales tax on any continued occupancy by the person provided such occupancy continues uninterrupted.

The rental of real property for the purpose of residency is not subject to sales tax. In order to distinguish the difference between selling hotel services and renting real property, sales tax regulations provide that the rental of a complete living unit, with its own kitchen, bathroom and sleeping rooms, for a term of one week or more where the landlord does not provide maid, food or other hotel services, is considered the rental of real property and is not subject to sales tax. Generally, bed and breakfast operations do not rent complete living units, even though the guest may have certain privileges or the use of other areas within the premises of the bed and breakfast other than the sleeping quarters.

Certain purchasers are exempt from the payment of tax by specific reference in the Tax Law. Therefore, there may be occasions when guests will claim that sales tax should not be charged on their bill. Persons claiming to be exempt from sales tax must provide the host with a properly completed New York State sales tax exemption certificate. Where a host lists his or her lodging

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with a bed and breakfast registry and the registry receives the exemption document from the guest, the host must arrange to obtain such document from the registry in order to establish why sales tax was not collected on the charge to that guest. Any failure by the host to keep proper documentation that would verify the exempt status of certain occupancies could subject the host to an assessment of additional tax.

Miscellaneous Sales

Since the host of a bed and breakfast is required to hold a certificate of authority to collect sales tax on occupancy charges, the host also becomes liable for collection of sales tax on other taxable transactions made in the course of running the bed and breakfast operation.

Other taxable transactions include (but are not limited to) the sale of telephone service, prepared meals and certain other food and drink, the sale or rental of tangible personal property, and the sale of parking or storage services. Generally, requirements concerning recordkeeping, tax collection, reporting and payment of tax on these other taxable sales conform with those concerning occupancy charges. For more information on these and other requirements, and for additional information concerning permanent residents, exempt purchasers, and other matters relating to bed and breakfast services, request Publication 848, * entitled "New York State and Local Sales Tax Information on Hotel and Motel Operations" by calling toll free (from inside New York State) 1-800-462-8100 or (from outside New York State) 518-438-1073.

* Caution

Where the information in this memorandum differs from Publication 848 (with print dates prior to 10/92) the information in this memorandum is controlling.