Sales Tax Rate Change

The New Jersey Sales and Use Tax rate will be reduced in two phases between 2017 and 2018. P.L. 2016, c.57 decreases the Sales and Use Tax rate from 7% to 6.875% on and after January 1, 2017. The tax rate will decrease to 6.625% on and after January 1, 2018.

The information in this publication has not yet been updated to reflect the change in the sales tax rate from 7% to 6.875% that takes effect January 1, 2017.

Continue to the next page to view the current version of this publication.

Hotel Occupancies and New Jersey Taxes

Bulletin S&U-13

Introduction

This bulletin explains the application of the New Jersey Sales and Use Tax Act to the sale of hotel occupancies and related goods, services, and fees. It also explains other taxes administered by the Division of Taxation that may apply to the sale of hotel occupancies.

This document is designed to provide guidance to taxpayers and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of this publication.

General Information

Charges for occupancies of a room or rooms in a hotel in New Jersey are subject to sales tax, the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax. "Occupancy" means the use or possession or the right to the use or possession, of any room in a hotel. There is an expectation that customary services, such as maid service and front desk reception, will be provided. Sales tax does not apply to charges for the rental of real property, such as house rentals or commercial leases.

Registration

Every seller of taxable property, services, or occupancies maintaining a place of business in New Jersey, employing workers in this State, owning any business property here, or otherwise conducting business or **soliciting business** in this State must register with New Jersey for tax purposes at least 15 business days before starting business.

To register, sellers may file Form NJ-REG **online** through the Division of Revenue and Enterprise Services' NJ Business Gateway Services website. A Public Records Filing may also be required depending on the type of business ownership. More information on Public Records Filing is available in the *New Jersey Complete Business Registration Package* **(NJ REG)** or by calling 609-292-9292.

State Occupancy Fee

A 5% State Occupancy Fee is imposed on charges for occupancies that are subject to sales tax. However, in cities where such occupancies are already subject to a municipal tax, the State Occupancy Fee is imposed at a lower rate (Atlantic City, 1%; Newark and Jersey City, 1%; and the Wildwoods, 3.15%). The State Occupancy Fee is not subject to sales tax and must be separately stated from sales tax on invoices provided to guests.

Municipal Occupancy Tax

New Jersey law authorizes any New Jersey municipality, other than Newark, Jersey City, Atlantic City, Wildwood, Wildwood Crest, and North Wildwood, to adopt an ordinance which imposes a municipal tax on occupancies in that municipality, which can be less than or equal to 3%.

See the **Municipal Occupancy Tax List** for a list of municipalities that have enacted this tax.

Occupancies Subject to Tax

For sales tax purposes, "hotel" means a building or portion thereof which is regularly used and kept open as such for the lodging of guests. "Occupant" means a person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Hotels can be open year-round or seasonally and are typically maintained by on-site management with front desk reception. The relationship between the operator of the establishment and an occupant is considered that of an innkeeper and guest, not that of a landlord and tenant. The signing of a lease cannot overcome the presumption that the facility is operated as a hotel.

Examples of a hotel include, but are not limited to, the following:

- An apartment hotel, bed and breakfast, motel and inn;
- A boarding house or rooming house containing eight or more units;
- A condotel (a building used as both a condominium and a hotel); and
- Any other building or group of buildings in which sleeping accommodations are normally available to the public on a transient basis.

The manner in which a hotel is owned has no effect on the sales tax treatment of its room occupancies. For example, privately owned properties may act in a manner consistent with offering hotel occupancies for a portion of the year and include services customarily provided by hotels such as: maid service, linen service, room service, safe storage, and concierge services. The privately owned property is thus treated as a hotel.

Occupancies Not Subject to Tax

Furnished or unfurnished private residential properties (i.e., condominiums, bungalows, single-family homes, and similar living units) in which the lessor does not provide customary hotel services (maid service, room service, linen service, etc.) and for which the keys to the property are provided to the lessee at the location of an off-site real estate broker are not hotels.

Charges for occupancies of such facilities are not subject to sales tax. The furnishing of linens without the service of changing the linens does not alter the nontaxable nature of the facility.

Other common real property rentals or occupancies that are not subject to sales tax include, but are not limited to:

- Places of assembly;
- Healthcare and similar facilities such as a nursing home, assisted living community, rehabilitation center, etc.;
- Summer camps and other overnight camps;
- Campsites available for trailers, recreational vehicles, or tent camping;
- College dormitories and other student-housing facilities.

Occupancies that are not subject to sales tax are not subject to the State Occupancy Fee or the Municipal Occupancy Tax.

Permanent Residents

An occupant of any room or rooms in a hotel for at least 90 consecutive days is considered a permanent resident for the period of such occupancy. A hotel operator must collect sales tax, the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax from an occupant until the occupancy reaches 90 consecutive days. When continuous occupancy has reached 90 days, the fee/taxes are no longer imposed and sales tax, the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax previously collected are refundable to the occupant. If the fee/taxes are not refunded to the occupant by the hotel operator, the occupant may request a refund directly from the Division of Taxation by filing **Form A-3730**, Claim for Refund.

If an up-front written agreement exists between the parties for a rental of 90 consecutive days or more, the hotel operator is not required to charge sales tax on the occupancy. However, if the occupant vacates the hotel in less than 90 days, sales tax, the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax are due on the full occupancy period.

Example 1
Airline enters into a written contract with Hotel for the continuous occupancy of five rooms for use by its flight crews for a period of one year. Hotel is not required to charge the fee/taxes on the occupancy of the five rooms. This is true regardless of whether the flight crew actually occupies the five rooms all 365 days. As long as Hotel kept the rooms available for the flight crews on an ongoing basis during the contract period, and Airline paid for the rooms, the permanent resident exemption applies.

Example 2
Corporation reserves and pays Hotel for a room four times during the year for use by its out-of-State employees. Because Corporation has not entered into a written agreement for continuous occupancy, the fee/taxes are due on the charges for the occupancy. Corporation's employees occupy rooms at Hotel for a total of 100 days. Although Corporation paid for over 90 days of hotel occupancy throughout the year, Corporation is not eligible for a refund. The 90-day time period cannot be established by aggregating the total number of days that Corporation has reserved and paid for occupancies. Corporation can only qualify for a refund of the fee/taxes for

any stay that was for a continuous period of 90 days or more.

Example 3
Couple stays at Motel with no written agreement as to the duration of the stay. Once the occupancy reaches 90 days, Motel ceases to charge the fee/taxes and Couple may apply to Motel or to the Division for a refund of the fee/taxes paid on the first 90 days.

Exempt Organizations

Exempt organizations registered with the New Jersey Division of Taxation that issue an Exempt Organization Certificate (Form ST-5) to a hotel and pay with the organization's funds are exempt from paying sales tax on occupancy charges. However, they must still pay the State Occupancy Fee and, if applicable, the Municipal Occupancy Tax.

If an exempt organization issues Form ST-5 to a hotel and pays the occupancy charges from an individual's account, the purchase is subject to sales tax, the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax. This is true regardless of the method of payment (personal check, credit card, cash, etc.) and regardless of the organization's intent to subsequently reimburse the individual.

Government Agencies

Any New Jersey State agency, political subdivision of the State of New Jersey, Federal agency, the United Nations, or any other international organization of which the United States is a member is exempt from paying sales tax, the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax on otherwise taxable occupancies. An exempt organization certificate or number is not required to make tax-exempt purchases or secure tax-exempt lodging in this State.

In transactions with government agencies, the acceptable proof of exemption from sales tax is a copy of a government purchase order, official contract, or order on official government letterhead signed by a qualified officer. Payment must be made by the agency's check or voucher for the exemption to apply. If payment is made from an individual's account, the purchase is subject to sales tax, the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax regardless of the method of payment (personal check, credit card, cash, etc.) and regardless of the agency's intent to subsequently reimburse the individual.

Federal employees are exempt from New Jersey sales tax, the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax if payment is made by a GSA SmartPay 2 credit card having a 0, 6, 7, 8, or 9 as the sixth digit of the account number (credit card charged to and paid directly by the Federal government). If payment is made with a GSA SmartPay card having a 1, 2, 3, or 4 as the sixth digit, the Federal government exemption does not apply because the card is billed to and paid by the employee.

In addition, certain exemptions are granted to qualified foreign diplomatic and consular personnel who reside in the United States. For information concerning the exemptions, see Technical Bulletin **TB-53**, *Diplomat/Consular Sales Tax Exemptions.*

Common Hotel Fees

Early Departure Fees are not subject to sales tax if they are similar to cancellation fees. If a sale is cancelled (e.g., the guest checks out early), there is no taxable transaction and the early departure fee is not subject to sales tax. However, if the hotel charges the agreed room rate for the remaining time, even though the customer checked out early and did not actually use the room during that time, this charge constitutes rent for the occupancy (i.e., the right to use or possess) of a hotel room and is taxable.

Late Checkout Fees are subject to sales tax. This fee constitutes an additional charge for the occupancy (i.e., the right to use or possess) of a hotel room and is taxable.

Cancellation Fees are not subject to sales tax. If a sale is cancelled, there is no taxable transaction and the cancellation fee is not subject to sales tax.

Forfeited Deposits are not subject to sales tax. A deposit is considered to be a payment against a future sale; sales tax is not due on a deposit until the actual occupancy that the deposit applies to occurs. If a sale is cancelled, there is no taxable transaction and the deposit is not subject to sales tax.

Reward Points are considered consumer incentives/promotions and sales tax is calculated depending on how the discount is given. Generally, if a room rate is offered at a discounted price and a third party will reimburse the hotel, then sales tax is based on the full room rate. If the hotel offers a discount on the room rate but will not be reimbursed, then tax on the room rate is based on the discounted price. If the hotel offers a free night's stay with no reimbursement by a third party, sales tax should not be charged on the free night. If a hotel offers two nights for the price of one, sales tax is based on the cost of one night.

Miscellaneous Hotel Fees

The following is a list of miscellaneous fees that a hotel may charge, with an indication of whether the item is taxable (T) or exempt (E) from sales tax:

Cot rentals	T
DVD rentals	T
Pet fees	T
Wi-Fi/Internet access	E
Laundering/dry cleaning of clothing	E
Resort fee (daily access to the fitness center, pool, etc.)	E
Daily newspaper delivery	E
Housekeeping	T
Bellman	E
Luggage storage	T
Room service	T

Parking Charges

New Jersey imposes sales tax on the receipts from parking, storing, or garaging a motor vehicle, excluding charges for the following: residential parking; employee parking when provided by an employer or at a facility owned or operated by the employer; municipal parking, storing, or garaging; and such receipts subject to tax pursuant to any other law or ordinance. Hotel parking is taxable unless a valid exemption exists (e.g., residential parking, an exempt organization, or a government agency). For more

information on parking charges, see publication **ANJ-23**, *Parking, Storing, Garaging Motor Vehicles & New Jersey Sales Tax.*

Rooms for Assembly

Sales tax does not apply to the rental of rooms for the purpose of assembly. Conference rooms, reception halls, and hospitality suites with no bedrooms are deemed rooms for assembly. Sales tax, the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax are imposed on charges for the occupancy of hotel rooms and suites even when occupants intend only to use the room(s) for the purposes of assembly (e.g., business meetings, event preparation).

Catering Services

Charges for catering services are subject to sales tax.

Breakfast Included Occupancies

A facility may provide guests with breakfast, whether continental or full-service, as part of the amount charged for the accommodation. The rent for an occupancy in such facilities includes breakfast, just as it may also include free parking, use of fitness facilities, afternoon snacks, and various other amenities, all of which are provided by the facility as part of the occupancy.

The total amount charged to the guest is subject to sales tax. The law specifies that the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax are based on the same amount charged for an occupancy that is subject to sales tax. Therefore, for "breakfast included" occupancies, the total amount charged to the guest is also subject to the State Occupancy Fee, and, if applicable, the Municipal Occupancy Tax.

Atlantic City

Luxury Tax

Charges for rentals of rooms, apartments, or other facilities in hotels, motels, bed and breakfasts, rooming and boarding houses, or similar establishments for less than one year are subject to a 9% Atlantic City Luxury Tax. If the rental is for less than 90 days, sales tax at the rate of 4% is also imposed. The charges for the Atlantic City Luxury Tax and New Jersey sales tax must be separately stated on the invoice, or the entire bill is subject to sales tax.

State Occupancy Fee

A fee of 1% is imposed on charges for occupancies in Atlantic City.

Tourism Promotion Fee

A fee of either $1 or $2 per day is charged for each room rental in a hotel, motel, inn, rooming house, etc., located in Atlantic City. This fee applies to each room either occupied or possessed by guests, other than as a place of assembly, and is also due on complimentary occupancies. The fee of $2 per day applies to each occupied room in a casino hotel. The fee of $1 per day applies to each occupied room in all other facilities. If the fee is passed along to the customer as part of the charge for the occupancy, it is taxable for sales tax and luxury tax purposes, whether or not the fee is separately stated.

Casino Room Fee

A fee of $3 per day is imposed on each occupied room in a casino hotel in Atlantic City, even if the occupancy is complimentary.

Casino Parking Fee

A minimum charge of $3 per day is imposed for the use of a parking space for parking, garag-

ing, or storing motor vehicles on property owned or leased by a casino hotel in Atlantic City. For more information, see Technical Bulletin **TB-22**, *Atlantic City Casino Parking Fees*.

See publication **ANJ-17**, *Atlantic City: Luxury Tax, New Jersey Sales Tax & Other Fees,* for further information.

Wildwoods, Cape May County

In addition to the 7% New Jersey sales tax that is imposed on all occupancies of a room or rooms in a hotel in the State, rooms in the Wildwoods (Wildwood, Wildwood Crest, and North Wildwood) are subject to a 2% **Cape May County Tourism Sales Tax**, a 1.85% **Cape May County Tourism Assessment**, and the State Occupancy Fee of 3.15%, bringing the total taxes and fees to 14%.

Meadowlands Regional Hotel Use Assessment

Charges for occupancies of hotels located in the Meadowlands District, including hotels located on State-owned land, are also subject to a Meadowlands Regional Hotel Use Assessment of 3%. The assessment is imposed on room rentals that are currently subject to the New Jersey sales tax and is in addition to the sales tax, the State Occupancy Fee, and the Municipal Occupancy Tax, as well as any other tax or fee imposed by local ordinance on hotel occupancies.

The Meadowlands District refers to the Hackensack Meadowlands District designated by the New Jersey Meadowlands Commission as a 30.4 square-mile area along the Hackensack River covering portions of 14 municipalities located in Bergen and Hudson Counties within New Jersey. The 14 municipalities with portions in the Meadowlands District include: Carlstadt, East Rutherford, Little Ferry, Lyndhurst, Moonachie, North Arlington, Ridgefield, Rutherford, South Hackensack, and Teterboro in Bergen County; and Jersey City, Kearny, North Bergen, and Secaucus in Hudson County.

Inquiries about whether specific hotels are located within the Meadowlands District should be directed to the Meadowland Commission's Zoning Officer of the Day at 201-460-1700.

Purchases by Hotels

Hotels must pay sales or use tax on the purchase of furniture, linens, and any items that are left in the room for use by guests (e.g., toiletry items, such as toilet paper, tissues, shampoo), reading materials, and items that may be provided but not transferred to the occupant (e.g., televisions, microwaves, coffee makers, hair dryers). A hotel may use a resale certificate when purchasing items that it sells to guests; the hotel must separately state this item on the invoice provided to the guest (e.g., gift shop item).

For More Information

Online

- Division of Taxation website: **www.njtaxation.org**
- Email general State tax questions: **nj.taxation@treas.nj.gov**
  Do not include confidential information such as social security or Federal tax identification numbers, liability or payment amounts, dates of birth, or bank account numbers in your email.
- Subscribe to *NJ Tax E-News,* the Division of Taxation's online information service, at: **www.state.nj.us/treasury/taxation/listservice.shtml**

By Phone

- Call the Division of Taxation's Customer Service Center at **609-292-6400.**
- Text Telephone Service (TTY/TDD) for Hearing-Impaired Users: **1-800-286-6613** (toll-free within NJ, NY, PA, DE, and MD) or **609-984-7300**. These numbers are accessible *only* from TTY devices. Submit a text message on any New Jersey tax matter and receive a reply through NJ Relay Services (711).

In Person

Visit a New Jersey Division of Taxation regional office. For the address of the regional office nearest you call the Automated Tax Information System at 1-800-323-4400 or visit **www.state.nj.us/treasury/taxation/ot1.shtml**

In Writing

New Jersey Division of Taxation
Technical Information Branch
PO Box 281
Trenton, NJ 08695-0281

Forms and Publications

- Visit the Division of Taxation's website:
  Forms — **www.state.nj.us/treasury/taxation/forms.shtml**
  Publications — **www.state.nj.us/treasury/taxation/pubs.shtml**
- Call the Forms Request System at **1-800-323-4400** (within NJ, NY, PA, DE, and MD) or **609-826-4400** (Touch-tone phones only) to have printed forms or publications mailed to you.
  Note: Due to budgetary constraints, supplies are limited and only certain forms and publications can be ordered through this System.