



FLORIDA

Executive
Director

Leon M. Biegalski

November 22, 2017

QUESTION: Are Taxpayer's no-show charges (equal to one night's room charge) subject to Florida sales tax (and applicable surtaxes, tourist development taxes, etc.) when a guest with a reservation fails to cancel the reservation within the specified cancellation period and fails to show at the hotel?

ANSWER: The no-show charges imposed by the Taxpayer's Florida hotels on a guest who has made a reservation and fails to cancel it and fails to show at the hotel is subject to sales tax¹ pursuant to Rule 12A-1.061(6)(b), F.A.C. Since Taxpayer's guests are guaranteed a room upon making a reservation (with a credit card number) until 3:00 a.m. to 4:00 a.m. the next morning, even if they fail to cancel with the specified cancellation period, sales tax is due on the no-show charge.

Re: Technical Assistance Advise ment No. 17A-026
Sales and Use Tax – Transient Rentals Tax
XXXXXXXXXX (“Taxpayer”)
Sections 125.0104, 125.0108, 212.03(1)(a), 212.0305, and 212.054, Florida
Statutes (“F.S.”)
Rule 12A-1.061, Florida Administrative Code (“F.A.C.”)

Dear XXXX:

This letter is a response to your petition dated May 25, 2016, for the Florida Department of Revenue's ("Department") issuance of a Technical Assistance Advise ment (“TAA”) concerning whether the no-show fee charged by Taxpayer's Florida hotels when a room is not cancelled within a specified time prior to the scheduled arrival is subject to Florida sales tax pursuant to Rule 12A-1.061(6), F.A.C. Your petition has been carefully examined and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, Florida Administrative Code. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

Requested Advise ment

¹ When “sales tax” is mentioned in this TAA, it should be noted that discretionary county sales surtax, Tourist Development Tax, Convention Development Tax, and Tourist Impact Tax may be applicable as well. See ss. 125.0104, 212.054, 212.0305, and 125.0108, F.S.

Child Support – *Ann Coffin, Director* • General Tax Administration – *Maria Johnson, Director*
Property Tax Oversight – *Dr. Maurice Gogarty, Director* • Information Services – *Damu Kuttikrishnan, Director*

Are Taxpayer's no-show charges (equal to a one night's room charge) subject to Florida sales tax (and applicable surtaxes, tourist development taxes, etc.) when a guest with a reservation fails to cancel the reservation within the specified cancellation period and fails to show at the hotel?

Brief Answer

The no-show charges imposed by the Taxpayer's Florida hotels on a guest who has made a reservation and fails to cancel it and fails to show at the hotel is subject to sales tax² pursuant to Rule 12A-1.061(6)(b), F.A.C. Since Taxpayer's guests are guaranteed a room upon making a reservation (with a credit card number) until 3:00 a.m. to 4:00 a.m. the next morning even if they fail to cancel within the specified cancellation period, sales tax is due on the no-show charge.

Facts

Taxpayer is a global hospitality company that has XX hotels in Florida. Taxpayer's representative states that, in order for a guest to make a reservation at one of Taxpayer's hotels, whether the reservation is made online or via the telephone, the following information is required: the guest's name, the arrival and departure dates, the room type, and a credit card. Taxpayer's written policy states that, in order to guarantee a reservation, a credit card or some form of deposit needs to be provided and a credit card is required in order to guarantee reservations made online.

Once a reservation has been made and confirmed by one of the hotels, a confirmation number is provided to the customer, which can be sent via a confirmation e-mail if an e-mail address has been provided. Although, usually, there are no booking fees or deposits taken at the time of booking for standard reservations, in the reservation confirmation e-mails Taxpayer's representative provided for one hotel, payment for one night's room charge plus tax was required at booking.

A guest can cancel a reservation anytime from 24 hours up to 72 hours prior to the scheduled arrival without a penalty. The precise number of hours required in order to cancel a reservation without penalty depends on the hotel where the guest has booked a reservation. However, cancellations that are made after the time to cancel without penalty has passed are subject to a one night's room charge and tax penalty. The penalty is the same regardless of which hotel has been booked. Taxpayer's representative states that the penalty charge of one night's room rate and tax is not related to the renting of rooms. This charge is not recognized for book purposes as rental income. Taxpayer guarantees reservations but not specific rooms.³

² When "sales tax" is mentioned in this TAA, it should be noted that discretionary county sales surtax, Tourist Development Tax, Convention Development Tax, and Tourist Impact Tax may be applicable as well. See ss. 125.0104, 212.054, 212.0305, and 125.0108, F.S.

³ With regards to guaranteeing reservations, the reservation will be honored provided that the guest meets all of the criteria to rent a room (e.g., has a valid driver's license and is 18 years of age). With regards to

If a reservation has not been cancelled, Taxpayer's representative states that the hotels will guarantee a guest a reservation up until the time the night audit of the hotel is performed, which is generally around 3:00 a.m. to 4:00 a.m. Taxpayer's representative further states that, if a guest has not arrived by the time the night audit is performed and the guest has not contacted the hotel to notify it of his/her late arrival, the guest will be marked as a "no-show." No-show reservations are subject to a one night's room rate and tax penalty.⁴

Taxpayer's written policy, however, states that reservations that have been guaranteed with a credit card and/or deposit will be held until the guest arrives. It also states that its "reservation guarantee" is that, if you book a room on its web site and prepay with a credit card, Taxpayer's hotel "will have a room reserved for you when you arrive" or will provide a free night at a comparable hotel.

Taxpayer's No Show Fees policy defines no-show fees as "revenue derived from a guest who has guaranteed payment to reserve a room, but has failed either to occupy the room or cancel the reservation within the prescribed timeframe." No-show fees are reflected as "Rooms Revenue No Show" in Taxpayer's accounting records, and cancellation penalties are reflected as "cancellation penalties."

Taxpayer's Argument

The Taxpayer states that the cancellation fees imposed by Taxpayer are in the nature of penalties or liquidated damages and not in the form of a prepayment or deposit. The cancellation fees do not guarantee the use or possession of the hotel rooms for the planned length of the guest's stay. In support of this position, Taxpayer does not rent rooms to individuals under the age of 18. If a potential guest under the age of 18 makes a reservation, when the guest arrives at the hotel, Taxpayer will not provide the guest with a room.

The Taxpayer further states that the hotels' no-show policy is most like the example in Rule 12A-1.061(6)(a)1.c., F.A.C., which provides:

Example: A potential guest makes reservations at a hotel for a designated night. The hotel requires a deposit equal to the room rate to hold a room until a time certain, such as 6:00 p.m., on the designated night. The guest does not arrive at the hotel and fails to cancel the reservation. The hotel retains the deposit. Because payment of the deposit did not provide the potential guest the right to the use of the room and the hotel did not collect any tax from the potential guest, the room deposit is not subject to tax.

reservations of specific rooms, if a guest requests a room overlooking the pool, the hotel will try to accommodate the guest, but it does not reserve a specific room for a guest.

⁴ No-show penalties are charged against the credit card used to book the reservation, if no billing or routing has been set up. If billing/routing has been set up, the no-show penalty will be billed to the responsible party.

Discussion and Response

Section 212.03(1)(a), F.S., sets forth the legislative intent to tax transient rentals and provides, in relevant part:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license to use any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with any hotel For the exercise of such taxable privilege, a tax is hereby levied in an amount equal to 6 percent of and on the total rental charged for such living quarters or sleeping or housekeeping accommodations by the person charging or collecting the rental. . . .

Rule 12A-1.061(4)(a), F.A.C., provides:

Rental charges or room rates for the use or possession, or the right to the use or possession, of transient accommodations are subject to tax, whether received in cash, credits, property, goods, wares, merchandise, services, or other things of value.

While the actual rental of a hotel room is taxable, the issue in this case (“the instant case”) is whether the no-show fees assessed when guests have failed to cancel their reservations and failed to show at Taxpayer’s hotels for their reservations are subject to sales tax. The applicable rule is Rule 12A-1.061(6), F.A.C., which provides, in relevant part:

(6) Deposits, prepayments, and reservation vouchers.

(a) The following deposits or prepayments paid by guests or tenants to the owner or owner’s representative of transient accommodations are not rental charges or room rates and are not subject to tax:

1.a. Deposits or prepayments that are required to be paid to secure a potential guest or tenant the right to rent, lease, let, or license a transient accommodation by a time certain. Such deposits do not guarantee the transient guest or tenant the use or possession, or the right to the use or possession, of transient accommodations.

b. Example: A potential tenant reserves a beach house for a specific week from a management company. The management company requires a \$100 reservation deposit to hold the beach house until a time certain, such as 6:00 p.m., the first night of the reserved week. The tenant is unable to use the beach house for the reserved week, but fails to cancel the reservation with the management company. The management company retains the \$100 deposit. Because the \$100 charge

does not provide the tenant the right to the use of the beach house, the \$100 deposit is not subject to tax.

c. Example: A potential guest makes reservations at a hotel for a designated night. The hotel requires a deposit equal to the room rate to hold a room until a time certain, such as 6:00 p.m., on the designated night. The guest does not arrive at the hotel and fails to cancel the reservation. The hotel retains the deposit. Because payment of the deposit did not provide the potential guest the right to the use of the room and the hotel did not collect any tax from the potential guest, the room deposit is not subject to tax.

(b) Rental charges or room rates include deposits or prepayments that guarantee the guest or tenant the use or possession, or the right to the use or possession, of transient accommodations during a specified rental period under the provisions of an agreement with the owner or owner's representative of transient accommodations. The owner or owner's representative is required to provide transient accommodations to any guest or tenant that enters into such an agreement and pays the required prepayment or deposit, even when the guest or tenant does not occupy the accommodation.

1. Example: A potential tenant enters into an agreement with the owner of a condominium unit to reserve the unit for a specified week. In exchange for the required deposit, the tenant is guaranteed that the unit will be available for use during the specified week. The tenant is permitted to cancel the reservations and receive a full refund of the required deposit provided that the cancellation is received 48 hours prior to the scheduled arrival date. The tenant makes the required prepayment by issuing a credit card authorization for the amount of the weekly rental charges. Even though the tenant is unable to use the unit during the specified week, the tenant fails to cancel the reservation. The condominium owner charges the tenant's credit card for the unit. The weekly rental charges paid by the tenant for the condominium unit is subject to tax, even though the tenant does not use the unit.

2. Example: A hotel guarantees that it will provide room accommodations on a designated date to potential guests that make reservations and pay a required room deposit. To receive a refund of the required room deposit, the potential guest must cancel his or her reservations by 4:00 p.m. of the designated date. A potential guest that has made reservations and has paid the required room deposit fails to cancel the reservations and fails to arrive at the hotel on the designated date to use the reserved room accommodations. Because the potential guest fails to cancel the reservations, the guest forfeits the room deposit. Even though the guest did not occupy a room at the hotel, the forfeited room deposit is subject to tax.

The difference between paragraphs (6)(a) and (6)(b) in Rule 12A-1.061, F.A.C., is that, in paragraph (6)(a), the deposits or prepayments do not guarantee the guest the use or possession, or the right to the use or possession, of the transient accommodations and, in paragraph (6)(b), they do. When the deposits or prepayments do not guarantee the use or possession, or the right to the use or possession, of the rooms, as in paragraph (6)(a), the deposits or prepayments are not subject to sales tax. In the examples in paragraph (6)(a), the rooms are held until 6:00 p.m., and, if the guests do not show by then, the rooms cease to be held and can, conceivably, be rented to other patrons.

In paragraph (6)(b) of Rule 12A-1.061(6), F.A.C., however, the deposits or prepayments guarantee the potential guest the use or possession, or the right to the use or possession, of the transient accommodations and, in this case, if the guests fail to cancel their reservations within the time allotted by the hotel and fail to show at the hotel, the forfeited room deposits or prepayments are subject to sales tax.

In the instant case, the Taxpayer's hotels guarantee that a room will be held until 3:00 a.m. or 4:00 a.m. in the morning following the scheduled date of arrival when one pays a deposit or a prepayment. It is not likely that a room would be rented to someone else at that time, so, for all practical purposes, the deposit guarantees the guest a room for the full night. Even if all the rooms in Taxpayer's hotels are rented, the Taxpayer's hotel will "walk" the guest to a competitor in order to secure a comparable room for the guest.

The Taxpayer argues in its TAA request that its facts are distinguishable from the facts in Boca Raton Resort and Club v. Palm Beach County Tax Collector (Case No. 05-1781, Florida Division of Administrative Hearings (2006), *aff'd*, 955 So. 2d 582 (Fla. 4th DCA 2007)), in which a Division of Administrative Hearings case sustaining the imposition of sales tax on no-show fees was affirmed by Florida's Fourth District Court of Appeal. We respectfully disagree and believe that the Boca Raton case is on-point with the facts presented here.

Conclusion

The no-show charges imposed by Taxpayer's Florida hotels on a guest who has made a reservation and fails to cancel it and fails to show at the hotel are subject to sales tax pursuant to Rule 12A-1.061(6)(b), F.A.C., because the guest is (for all practical purposes) guaranteed a room.

This response constitutes a Technical Assistance Advisement under section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than that expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advise ment, the backup material, and this response, deleting names, addresses, and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Katharine Heyward

Katharine Heyward
Tax Law Specialist
Technical Assistance & Dispute Resolution

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Record ID: 16545