

Revised Revenue Ruling 19-2010-04

August 8, 2012

**Tax Base for Kansas Transient Guest Taxes
and the Sales Tax Imposed at K.S.A. 2009 Supp. 79-3603(g)**

Kansas law contains two transient guest tax statutes that levy tax on charges to transient guests for sleeping accommodations. K.S.A. 12-1693 authorizes Sedgwick County, or a qualifying city within the county, to levy local transient guest tax. K.S.A. 12-1697 authorizes other qualifying Kansas cities and counties to levy the local tax. The rate of a city or county tax may not exceed 2%.

Kansas sales tax is imposed on charges for renting rooms to transient guests for use as sleeping accommodations. *K.S.A. 2009 Supp. 79-3603(g); K.S.A. 36-501(a)*. The tax rate for this levy is the combined state and local sales tax rate in place where the room is located.

A business is required to collect transient guest tax if it maintains three or more rooms to rent to transient guests as sleeping accommodations. A business is required to collect sales tax if it maintains four or more such rooms. These collection duties apply whether or not the sleeping rooms are in one or more buildings denominated a hotel, motel, tourist court, camp cabins, rooming house, boarding house, apartment, or something else, so long as the business advertises or otherwise holds itself out to the public as engaging in the business of renting sleeping accommodations to transient guests. For reasons of simplicity, this ruling will refer to these businesses collectively as "hotels."

The department implements transient guest tax and K.S.A. 2009 Supp. 79-3603(g) as taxing hotel charges to guests for "sleeping accommodations, exclusive of charges for incidental services or facilities." Because of this uniform treatment, any separately-stated charge that is subject to transient guest tax is subject to sales tax under K.S.A. 2009 Supp. 79-3603(g).

"Accommodation" means "something supplied . . . to satisfy a need," which suggests that a charge for "sleeping accommodations" includes more than simply the charge that gives a guest the right to occupy a hotel room. *Webster's Ninth Collegiate Dictionary, p. 49*. Because transient guest tax is imposed on charges for "sleeping accommodations," the department implements transient guest tax and K.S.A. 2009 Supp. 79-3603(g) as taxing separately-stated charges for cots, cribs, rollaway beds, extra bedding, and linens that are placed in a guest's sleeping room, in addition to the charge for the right to occupy the room. Charges for the right to occupy a hotel sleeping room, which is the principal charge for "sleeping accommodations," includes the charges for the room itself as well as any separately-stated charges for extra guests, lost keys, having pets in the sleeping room, and various other charges that are listed below.

Section I lists separately-stated charges billed to a guest's room that are considered to be charges for sleeping accommodations. These charges are subject to both transient guest tax and sales tax under K.S.A. 2009 Supp. 79-3603(g). Sections II and III list many but not all of the separately-stated guest charges that are considered to be charges "for incidental services or facilities." Because these charges are not for sleeping accommodations, they are not subject to either transient guest tax or the sales tax imposition at K.S.A. 2009 Supp. 79-3603(g). This doesn't mean that charges for "incidental services or facilities" are not subject to sales tax.

Many of these charges are taxed by sales tax impositions other than K.S.A. 2009 Supp. 79-3603(g). For example, charges to a guest for meals, rentals of tangible personal property, and laundry and dry cleaning services are specifically taxed under K.S.A. 2009 Supp. 79-3603(d) - (*sales of meals*), K.S.A. 2009 Supp. 79-3603(h) - (*rental services*), and K.S.A. 2009 Supp. 79-3603(i) - (*laundry and dry cleaning services*). There are many other sales tax impositions that can apply to a separately-stated guest charge, even though the charge isn't for "sleeping accommodations."

Hotels need to know how to charge tax on the separately-stated charges they bill to guests. Section I of this Revenue Ruling lists separately-stated charges for "sleeping accommodations" that are subject to both transient guest tax and the sales tax imposed at K.S.A. 2009 Supp. 79-3603(g). Section II lists separately-stated charges for "incidental services or facilities" that are not subject to transient guest tax or K.S.A. 2009 Supp. 79-3603(g), but are subject to sales tax under imposition sections other than K.S.A. 2009 Supp. 79-3603(g). Section III lists charges that are not subject to either transient guest tax or sales tax.

The list in Section I includes separately-stated charges that are taxed as a charge for sleeping accommodations. Sections II and III are not all inclusive.

I. SEPARATELY-STATED CHARGES FOR SLEEPING ACCOMMODATIONS THAT ARE SUBJECT TO BOTH TRANSIENT GUEST AND SALES TAX.

Charges for a sleeping room.

Charges for additional guests in a sleeping room.

Charges for pets in a sleeping room.

Charges for placing a cot, roll-away bed, or a crib in a guest's room.

Charges for providing additional bedding or linens to a guest's room.

Lost key and lock-out charges.

No-show charges.

Early departure charges.

A flat, non-negotiable separately-stated charge for having a telephone or television in a sleeping room.

Charges for package-deals, unless charges for meals, drinks, admissions, or other items in the package are invoiced separately from charges for the sleeping accommodations.

The cost of "incidental services and facilities" and other non-taxable services when the costs are not recovered as separately-listed charges on an invoice for a sleeping room.

II. SEPARATELY-STATED CHARGES FOR INCIDENTAL SERVICES THAT ARE SUBJECT TO KANSAS SALES TAX BUT NOT TRANSIENT GUEST TAX.

Charges for meal service provided to a guest's room.

Charges for food, non-alcoholic drinks, and cereal malt liquor as defined by K.S.A. 41-2701(a) that a guest removes from an in-room refrigerator or bar and consumes.

Dry cleaning and laundry charges.

Charges for telephone access in a guest's room.

Rental charges for placing a small refrigerator, exercise equipment, an in-room safe, or other equipment in a guest's room. (*Note: Separately-stated charges for cots, cribs, extra bedding and linens are also subject to transient guest tax; See Section I.*)

Charges for pay-per-view or on-demand television programming.

Charges to a guest for use of a hotel's athletic club, pool, spa, sauna, or exercise room.

Photocopy fees.

III. SEPARATELY-STATED CHARGES FOR INCIDENTAL SERVICES THAT ARE NOT SUBJECT TO EITHER TRANSIENT GUEST TAX OR KANSAS SALES TAX.

Charges for ballrooms, banquet rooms, meeting rooms, office space, or other areas not use as sleeping accommodations.

Charges for a guest room that is converted for use as a display room, meeting room, or other use provided the room is not also used for sleeping.

Fees for personal services, such as haircuts, manicures, and massages.

Charges for use of a hotel safe or security box located outside a guest's room.

Charges for valet service.

Shuttle and other transportation fees.

Parking fees.

Charges for returned checks.

Charges to fax documents.

Internet access charges.

Guest charges for mixed alcoholic drinks are not subject to sales or transient guest tax but are subject to the liquor drink tax, K.S.A. 79-41a01 *et seq.*

Damage charges, whether for damage to real property or tangible personal property in a guest's room, which are not part of the normal room fee for similar guests and are damages occurring after the guest has begun to occupy the room.

Additional fees for special cleaning services, such as pet clean-up fees and fumigation fees for smoking in a non-smoking sleeping room, which are not part of the normal room fee for similar guests and represent special cleaning fees due to improper actions by the guests(s) or pet.

DISCUSSION. In general. When a hotel bills a guest for sleeping accommodations, any costs associated with providing services to the guest's room are taxed as part of the charge for the sleeping accommodations, unless the costs are recovered as a separately-stated line-item charge on the guest's invoice. How separately-stated charges are taxed is explained in the lists above. A hotel may not bundle a guest's charges for a sleeping accommodation with nontaxable services, and tax less than the total amount billed as a bundled charge.

Both transient guest tax and K.S.A. 79-2009 Supp. 79-3603(g) are imposed on hotel charges to guests for sleeping accommodations "exclusive of charges for incidental services or facilities." Many charges are billed to a guest in accordance with: (1) the contractual agreement between a guest and a hotel; or (2) published hotel policy. Charges billed pursuant to a rental agreement or hotel policy almost always are directly related to a guest's right to occupy a sleeping room and are subject to both transient guest tax and the sales tax imposed at K.S.A. 79-2009 Supp. 79-3603(g).

Separately-stated charges for cots, rollaway beds, cribs, additional bedding, and additional linens that a hotel places in a sleeping room are taxed as charges for sleeping accommodations. These charges are subject to both transient guest tax statutes and K.S.A. 2009 Supp. 79-3603(g). As explained above, the two impositions on "sleeping accommodations" tax more than just the charge that gives a guest the right to occupy a sleeping room.

Cancellation vs. "no show" charges for sleeping rooms. Cancellation charges are not taxable. Since the room reservation was cancelled, no sale occurred and no sales or transient guest tax is due. A forfeited "no show" charge is taxable. This charge is for the guest's right to occupy a hotel room on a specific date, whether the guest arrives to use the room or not.

Early departure charges. These charges are provided for by hotel policy or by the agreement between the guest and the hotel. The charges are billed after a guest has occupied a room. K.S.A. 2009 Supp. 79-3603(g) and transient guest tax apply to these charges because they are a condition placed on the guest's right to occupy the room by the parties' agreement or by hotel policy.

Separate line-item charges for equipment placed in meeting rooms. While charges for ballrooms, banquet rooms, meeting rooms, or office space are not subject to sales or transient guest tax, sales tax applies to separate line-item charges for audio-visual equipment, computers, public address systems, tables, chairs, flowers, decorations, and other items that are placed in the rooms. These are taxable rental charges.

Standard room furnishings. Some hotels charge more for rooms with televisions or telephones than for rooms without them. Charges for standard room furnishings like televisions or telephones are taxable even when separately stated.

Telephone. Hotels are required to pay sales tax on all of the telephone services they buy. This includes charges for local, intrastate, interstate, and international calls that are billed to the hotel, whether the calls were made by hotel guests or by hotel employees in the course of business.

Most guests pay for their long distance calls as a prepaid or post-paid telephone services. Sales tax on these calls is collected by the telephone service provider. Guest access to these service providers is gained by placing a local telephone call.

Charges to guests by hotels for telephone access (charges for making local telephone calls) are taxable. For example, if a hotel charges 50 cents per local call, it is an access charge and is

taxable — the phone company doesn't charge that amount for local calls, but the hotel charges the 50 cent fee to guests for accessing telephone service.

When a hotel is charged for a guest's long distance call, the charge billed to the guest to reimburse the hotel for the cost of the call is not taxable if the charge equals the amount that the provider billed to the hotel for the call. This charge includes the sales tax that the provider billed to the hotel on the charge for the telephone call. Any mark-up that is added to a guest's charge for a long distance call is taxable as an access charge.

Charges for liquor. Charges billed to a guest's room for mixed drinks containing liquor are subject to the liquor drink tax imposed at K.S.A. 79-41a01 *et seq.* These charges are not subject to either sales or transient guest tax.

This ruling clarifies the department's existing policy on the application of transient guest tax and K.S.A. 79-3603(g) to charges for sleeping accommodations. This ruling clarifies and supersedes all prior advice given in information guides that have been issued on this subject.

Secretary of Revenue

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