

GIL 1-19-1 Short-term Rental Licensing, Filing, Tax Base, and Collection Responsibilities for Lodging and Sales Taxes

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August 22, 2019

Dear XXXX,

You have asked what is the proper tax base for lodging and sales taxes imposed on short-term rentals of lodging (rentals for less than 30 days). Because of the nature of the question asked and the recent passage of [LB 284](#) (2019), which addresses sales and use tax collection for remote sellers and multivendor marketplace platforms (MMPs), we are providing this General Information Letter (GIL) in response.

GILs address general questions; provide analysis of issues; and direct taxpayers to the Nebraska statutes, Nebraska Department of Revenue (DOR) regulations, revenue rulings, or other sources of information to help respond to a question. A GIL is a statement of current DOR policy, and taxpayers may rely on DOR to follow the principles or procedures described in a GIL until it is rescinded or superseded. You may also find current regulations, revenue rulings, information guides, taxpayer rulings, and other GILs that may be helpful to you at revenue.nebraska.gov.

LB 284 expanded the collection and filing responsibilities for sales tax and lodging tax collection on short-term rentals to include MMPs, also known as marketplace facilitators, that facilitate short-term rentals. Facilitating a sale includes acting as an intermediary between a seller and a purchaser, or engaging directly or indirectly in an offer or acceptance between a seller of short-term rentals and a purchaser. Effective April 1, 2019, MMPs facilitating short-term rentals must obtain sales and lodging tax licenses and begin collecting and remitting these taxes on sales they facilitate. The MMP is to complete and submit the MMP Lodging Tax Worksheet - Breakdown by County with the Nebraska and County Lodging Tax Return, Form 64, to report the lodging tax by each county for sales they facilitated in Nebraska.

Hotel or tourist home owners are relieved of the duty to collect and remit the sales and lodging taxes on sales facilitated by the MMP if the MMP has reported and remitted these taxes to DOR. However, hotel and tourist home owners of short-term rental properties are required to collect and remit the sales and lodging taxes on sales that are not facilitated by an MMP.

Prior to passage of LB 284, a separate law, [LB 57](#), pertaining to licensing of short-term rentals was signed into law. That law included a provision allowing DOR to enter into an agreement with an MMP to waive the tax collection responsibility of a hotel or tourist home owner. Since LB 284 now requires MMPs to collect and remit sales and lodging taxes to the state, DOR will not enter into separate agreements with MMPs.

Tax Base for Short-term Rentals of Lodging

The sales tax base for short-term rentals of lodging is the total consideration paid by the guest whether paid directly to the hotel or tourist home owner or any other retailer of lodging and includes any charges imposed by the retailer whether the transaction is completed by the hotel, tourist home owner, or MMP. The tax base for lodging tax is also the total consideration paid by the guest, whether paid directly to the hotel or tourist home owner or any other retailer and includes any charges imposed by the retailer whether the transaction is completed by the hotel, tourist home owner, or MMP, but does not include charges for food or beverages, or any personal services rendered to the guest.

The Nebraska Visitors Development Act establishes a lodging tax as a mechanism to fund promotional activities to attract visitors and improvement projects that facilitate growth in Nebraska tourism. [Neb. Rev. Stat. § 81-3702](#). This tax is similar to the sales tax imposed in the Nebraska Revenue Act and is “interpreted, collected, remitted, and enforced by the Tax Commissioner under the provisions” contained therein. [Neb. Rev. Stat. § 81-3722](#). The tax base for short-term rentals of lodging is consistent between the sales tax and lodging tax because of this incorporation of the sales tax provisions in the Nebraska Visitors Development Act.

Hotel means any commercial, nonprofit, privately-owned, or publicly owned property in which the public may obtain sleeping accommodations for less than 30 days for a consideration. This includes any hotel, motel, tourist home, private home that is rented out in whole or in part for all or part of the year, campground, RV pad or hookup, lodging house, or inn. [Neb. Rev. Stat. § 81-3707](#). It does not include any licensed healthcare facility that is exempt from sales tax under [Nebraska Sales and Use Regulation 1-090.02](#), or any dormitory or facility regularly used to house students which is operated by a public institution or educational institution as identified in [Reg-1-092, Educational Institutions](#).

Tourist home is defined by [Dictionary.com](#) as “a private home with rooms for rent, usually for one night, to tourists, travelers, etc.” and by [Merriam-Webster](#) as “a house in which rooms are available for rent to transients.”

Hotel Owner means any person that owns a hotel, including a tourist home.

Short-term rental means renting or furnishing for periods of less than 30 days any room or rooms, lodgings, or accommodations in any hotel. [Neb. Rev. Stat. § 77-2701.33](#).

The tax base for a short-term rental under the provisions of the Nebraska sales tax, and by reference, the lodging tax also, is the total consideration paid by the consumer, in this case the guest, to the retailer or seller of property or services (including an MMP) valued in money, whether received in money or otherwise. [Neb. Rev. Stat. §§ 77-2701.16, 77-2701.33, 77-2701.35, 81-3707, and 81-3709](#). The tax base includes any charges imposed by the retailer (including an MMP) that are necessary to complete the sale and any local occupation tax imposed by a municipality.

As defined in the Nebraska Revenue Act, a retailer or seller of lodging includes any person who, directly or indirectly, rents or leases property for a profit or gain when the transaction is subject to the sales tax, including sales facilitated by an MMP. [Neb. Rev. Stat. §§ 77-2701.07, 77-2701.13, 77-2701.16, 77-2701.32 and 77-2701.36](#); see also [Neb. Rev. Stat. §§ 77-2701.25 and 77-2701.31](#), and [Nebraska Sales and Use Tax Regulations 1-004.02C](#). The broad language of the statutes demonstrates that the tax applies not only to the receipts of the hotel or tourist home owner, but also to the receipts of the MMP. A travel agent who does not publish the room availability and rates on behalf of the hotel or tourist home owner is generally not an MMP.

In summary, the tax base for accommodations under the Nebraska sales tax and lodging tax is the total consideration paid by the guest regardless of whether the hotel or tourist home owner or MMP, secures the reservation or collects the consideration from the guest. Separately-stated charges for food or beverages, or any personal services rendered to the guest are not included in the total consideration paid for accommodations for lodging tax purposes. [Neb. Rev. Stat. § 81-3706](#). Sales of prepared food, rentals of tangible personal property, and other products may be subject to sales tax, but not lodging tax.

For the Tax Commissioner

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