

Title 316 - NEBRASKA DEPARTMENT OF REVENUE

Chapter 68 - LODGING TAX

REG-68-001 NATURE OF THE LODGING TAX

001.01 The Nebraska Visitors' Development Act authorizes the collection of a lodging tax to be administered by the Nebraska Department of Revenue. The lodging tax is a sales tax imposed upon the total gross receipts charged for the occupancy of any space furnished by a hotel in this state. The lodging tax is in addition to the sales and use tax imposed under the Nebraska Revenue Act of 1967, as amended.

(Sections 81-1245 through 81-1263, R.S.Supp., 1980. August 4, 1980)

REG-68-002 DEFINITIONS

002.01 "Consideration" means the total amount charged, valued in money, by hotel operators for the use of space in a hotel only if the space is ordinarily used for accommodations. It does not include a charge for any food or beverage served or personal services rendered to the occupant of such space.

002.02 "Gross Receipts" means the total amount of consideration, valued in money, arising or accruing from charges for hotel occupancies without any deduction for the amount paid for any occupation taxes.

002.03 "Hotel" means any commercial, nonprofit, or state-owned facility in which the public may, for a consideration, obtain sleeping accommodations. It includes any hotel, motel, tourist home, campground, court, lodging house, or inn. The term "hotel" does not include any hospital, sanitarium, nursing home, chronic care center, rooming or boarding house, or dormitory or facility regularly used to house students in a facility operated by an educational institution established under sections 79-1601 to 79-1607 or 85-1101 to 85-1111 of the Nebraska Revised Statutes.

002.04 "Hotel Operator" means any person who is engaged in the business of operating a hotel in this state.

002.05 "Occupancy" means the use or possession, or the right to the use or possession, of any space in a hotel if the space is ordinarily used for accommodations and if the occupant's use, possession, or right to the use or possession of such space does not exceed a period of thirty days. It does not include a function room such as a ballroom, banquet room, reception room, or meeting room, provided it is not used as temporary sleeping accommodations.

002.06 "Occupant" means any person or organization who, for a consideration, uses, possesses, or has a right to use or possess any space in a hotel if the space is ordinarily used for accommodations.

002.07 "Rooming or boarding house" means a quasi-public house held out by the owner or keeper as a place where roomers or boarders generally and habitually are kept. A "rooming house" differs from a "boarding house" only in that the latter furnishes meals.

(Sections 81-1246 through 81-1250, R.R.S. 1999. March 7, 2006.)

REG-68-003 THE LODGING TAX RETURN

003.01 A return is required for each period or portion of a period in which a lodging tax permit is active. The return must be filed for every tax period even though there have been no gross receipts from charges for hotel occupancies.

003.02 Lodging tax permitholders must report and account for all gross receipts from charges for hotel occupancies. If the return is filed within twenty-five days following the preceding tax period, the permitholder is entitled to deduct and withhold from the amount of lodging tax which otherwise would be due, a collection fee to reimburse himself or herself for the cost of collection.

003.03 Returns shall be signed by the person required to file the return or by his or her duly authorized agent.

003.04 Returns properly signed and accompanied by remittance will be considered timely filed if actually received or if mailed, postage prepaid, on or before the twenty-fifth day of the month following the close of the reporting period. When the twenty-fifth day falls on a Saturday, Sunday, or an approved holiday, the return shall be considered timely filed if actually received or if mailed, postage prepaid, on the next succeeding day which is not a Saturday, Sunday, or an approved holiday. A United States Postal Service postmark will be conclusive evidence of the date of mailing for the purpose of timely filing a return. When there is a private postage meter mark and there is no United States Postal Service postmark, the return is deemed filed on the date received. Failure to file the return or to remit the tax due by the due date will subject the person required to file a return to a penalty in the amount of the larger of twenty-five dollars (\$25.00) or ten percent of the tax due. In addition, interest will be imposed at the rate specified in section 45-104.01 of the Nebraska Revised Statutes from the due date to the date payment is received.

003.05 Remittance made payable to the Nebraska Department of Revenue must accompany the return and be in the form of a check, draft, money order, or other payment method as approved by the Tax Commissioner . Cash, post-dated checks, or postage stamps should not be sent as payment. Cash may be used when payment is made in person at an office of the Department of Revenue.

(Section 81-1260, R.R.S. 1999. March 7, 2006.)

REG-68-004 EXEMPTIONS

004.01 Occupants granted an exemption from the lodging tax are the same entities which are exempt from the sales and use tax under the Nebraska Revenue Act of 1967, as amended. See Sales and Use Tax Regs-1-090, 1-091, and 1-092 for a list of those organizations and educational institutions that are exempt from the payment of lodging tax provided they have received a certificate of exemption.

004.02 The federal government is exempt from the lodging tax. The state; any county, city, township, or village, except for purchases used in the business of furnishing gas, water, electricity, or heat; any rural or suburban fire protection district; and any irrigation or reclamation district or the irrigation division of a public power and irrigation district are exempt from the lodging tax.

004.03 An exempt sale certificate or other adequate proof is to be requested by the permitholder from the exempt organization or governmental unit described above in order to support deductions from gross receipts claimed by the permitholder on the lodging tax return. See Reg-68-005, Exempt Sale Certificates.

004.04 Employees of exempt organizations or exempt governmental entities are taxable when they personally pay for accommodations, even if the employee is on travel orders and will be reimbursed for expenses incurred by the exempt organization or governmental entity.

(Section 81-1260, R.R.S. 1999. March 7, 2006.)

REG-68-005 EXEMPT SALE CERTIFICATES

005.01 The burden of proving that any charge for a hotel occupancy is not subject to the lodging tax is upon the permitholder and he or she must keep sufficient records which reveal the nature of each exempt charge. A permitholder is required to obtain an exempt sale certificate from the organization or person in support of the claim that the charge is exempt. The exempt sale certificate constitutes a part of the permitholder's records and is to be retained in the same manner as other lodging tax records.

005.02 The Nebraska Department of Revenue will recognize only the Nebraska Resale or Exempt Sale Certificate, Form 13, a previously approved paper or electronic substitute, or a certificate of exemption authorized by the Streamlined Sales Tax Agreement for all sales except sales to the federal government. Regular federal certificate of exemption forms will also be accepted in lieu of the above forms when presented by an officer or an authorized employee of the United States government, its agencies, or corporations wholly owned by the United States government. The exempt sale certificate should include a statement as to the nature of the exempt charge and the sales and use tax exemption number of the occupant if such number is required.

005.03 Exemption numbers, in the form of sales and use tax numbered certificates of exemption, are issued by the Nebraska Department of

Revenue and are required for nonprofit organizations, and public schools. (Reg-68-004, Exemptions.)

005.04 The exempt sale certificate may appear as part of the invoice or billing for the occupancy; provided, that all requirements of the exemption certificate(s) identified in Reg-68-005.02 are met, and that the permitholder cross-references such invoices or billings to memoranda created at the time of the charge.

005.05 If a certificate or satisfactory evidence cannot be produced on demand of the Nebraska Department of Revenue in support of a claim that a charge is exempt, the tax is payable by the permitholder furnishing the hotel occupancy. If the Nebraska Department of Revenue determines that the permitholder knew or should have known that the charge for which a certificate was given was not exempt, the permitholder will be responsible for the tax.

005.06 The permitholder holding a properly completed exempt sale certificate is relieved from liability for tax, penalty, and interest. However, this does not apply to permitholders who fraudulently fail to collect tax or who solicit purchasers to participate in unlawful claims of exemption.

005.07 A permitholder repeatedly providing exempt hotel occupancies to the same occupant is not required to take a separate exempt sale certificate for each hotel occupancy but may take a blanket certificate covering future charges for hotel occupancies.

005.08 Any person who gives a Nebraska Resale or Exempt Sale Certificate, Form 13, to a permitholder for any purchase which is not exempted from the lodging tax shall be subject to a penalty of \$100.00 or ten times the tax, whichever amount is larger, for each instance of presentation and misuse. With regard to a blanket certificate, the penalty shall apply to each purchase made during the period the blanket certificate is in effect. Any person who fraudulently signs a Form 13 with the intention to avoid payment of the tax may, in addition to the aforementioned penalty, be found guilty of a Class IV misdemeanor.

005.09 The Nebraska Department of Revenue may make and retain copies of any exempt sale certificate.

(Section 81-1260, R.R.S.1999. March 7, 2006.)

REG-68-006 PERMITS

006.01 Every person engaged in the business of operating a hotel in this state where the public may, for a consideration, obtain sleeping accommodations, must file an application with the Nebraska Department of Revenue for a Nebraska lodging tax permit.

006.02 A separate application for a lodging tax permit is required for each hotel as defined in Reg-68-002.03 that is located in this state. The owner of a hotel whose accommodations are located in different counties is deemed

to be operating a hotel in each of the counties and is required to obtain a separate permit for each hotel.

006.03 Upon examination and approval of the application, the Nebraska Department of Revenue shall issue to the hotel operator a permit for the specific hotel for which the application was filed. The permit is not assignable, and will be valid only for the hotel operator in whose name it is issued and for the transaction of business at the location of the hotel designated thereon. The permit must be conspicuously displayed at the place of business.

006.04 Upon violation of any of the lodging tax statutes or regulations, the Nebraska Department of Revenue may revoke or suspend the permit or permits of the violator. The procedures as to revocation hearings are contained in Practice and Procedure Regulation 33-008.

006.05 A person whose permit has been previously suspended or revoked shall pay the Nebraska Department of Revenue a fee of twenty-five dollars (\$25.00) for the renewal or issuance of a permit in the event of a first revocation, and fifty dollars (\$50.00) for each successive revocation. A new permit will not be issued to the same person until the Nebraska Department of Revenue is satisfied that such person will comply with the lodging tax statutes and regulations issued thereunder.

006.06 A person who engages in the business of operating a hotel in this state without a permit or permits or after a permit has been suspended, and each officer of any corporation which so engages in business, shall be guilty of a misdemeanor. Upon conviction thereof, such person and each such officer shall be fined an amount not to exceed five hundred dollars (\$500.00) per each day of operation.

(Section 81-1260, R.R.S. 1999. March 7, 2006.)

REG-68-007 RECORDS

007.01 Every permitholder is required to keep records in order to determine the amount of tax due. These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in a similar activity, together with all documents supporting entries in the books of account. Schedules and working papers used in the preparation of the tax returns and all sales and use tax exemption certificates must be retained.

007.02 The permitholder may collect the lodging tax concurrently with and in the same manner as the sales tax is collected. Separate records to reflect the lodging tax and sales tax collected must be maintained so that the amount of each tax due can be determined.

007.03 The records created at the time a charge for a hotel occupancy is made may take the form of sales invoices, guest checks, tally sheets, itemized lists or other memoranda. A cash register tape may be acceptable if it preserves sufficient information.

007.04 The State Tax Commissioner or any person authorized in writing by him may examine the books, papers, records, and equipment of any person to ascertain or verify the accuracy of any return filed, or, if no return is filed by the person, to ascertain and determine the amount to be paid. Records must be retained for a period not less than three years after the return is filed, unless the Nebraska Department of Revenue, in writing, authorizes their destruction at an earlier date. However, the Nebraska Department of Revenue may issue a deficiency determination within five years after any amount of tax is determined due and payable when a return has not been filed.

(Section 81-1260, R.S.Supp., 1980. August 4, 1980.)

REG-68-008 CONFIDENTIAL INFORMATION

008.01 It shall be a misdemeanor for the State Tax Commissioner, his or her employees, legal representatives or agents, any employees of the State Treasurer or the Department of Administrative Services, or any person receiving information from them to divulge or to make known in any manner, the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return, copy of a return, or any book containing any abstract or particulars of a return to be seen or examined by any person not connected with the Tax Commissioner. The preceding shall not be construed:

008.01A To prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or grantors, of a certified copy of any return or report.

008.01B To prohibit the publication of statistics.

008.01C To prohibit the inspection by the Attorney General or other legal representative of the State of Nebraska of reports or returns of any taxpayer when information on the reports or returns is considered, by the Attorney General, to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency.

008.01D To prohibit the furnishing of information to the Treasury Department of the United States, Postal Inspectors of the United States Postal Service, or to tax officials of other states allowing similar privileges to the State Tax Commissioner and the Nebraska Department of Revenue.

008.02 Information as to whether or not a taxpayer has a lodging tax permit may be released upon request. This exception is due to the requirement that the permit of the taxpayer shall be conspicuously posted in the place of business of the taxpayer at all times.

REG-68-009 COUNTY LODGING TAX

009.01 Any county may authorize and impose a county lodging tax which will be collected and administered by the Nebraska Department of Revenue and remitted to the adopting county. Such tax shall be at the rate of one-half percent, one percent, one and one-half percent, or two percent of the gross receipts charged for hotel occupancies.

009.02 A county may impose a lodging tax after its governing body has held a public hearing and adopted resolutions to impose the tax and establish both a County Visitors' Promotion Fund and a visitors' committee which shall advise the county board in administering the proceeds from the tax. Implementation of the county lodging tax so imposed will not begin until the first day of the next calendar quarter following receipt by the Nebraska Department of Revenue of certified copies of the adopting resolutions prescribed above; provided, the certified copies are received 120 days prior to the start of the next calendar quarter.

009.03 A county may authorize and impose an additional county lodging tax which will be collected and administered by the Nebraska Department of Revenue and remitted to the adopting county. Such tax shall be in addition to the tax described in Reg-68-009.01 and shall be at the rate of one-half percent, one percent, one and one-half percent, or two percent of the gross receipts charged for hotel occupancies.

A county may impose this additional county lodging tax after its governing body has held a public hearing and adopted resolutions to impose the tax and establish a County Visitors Improvement Fund. Implementation of this additional county lodging tax will be accomplished as described in Reg-68-009.02.

009.04 If any county repeals or changes the rate of either of the county lodging taxes the effective date shall be the first day of the next calendar quarter following receipt by the Nebraska Department of Revenue of a certified copy of the adopting resolution making the change; provided, the adopting resolution is received 120 days prior to the start of the next calendar quarter.

009.05 The Nebraska Department of Revenue shall collect any lodging tax or additional lodging tax imposed by any county concurrently with the collection of the state lodging tax and in the same manner as the state lodging tax is collected. Lodging tax permits, exempt sale certificates, and certificates of exemption issued to exempt organizations which are authorized or required for state lodging tax purposes will satisfy the requirements of the county lodging tax.

009.06 Gross receipts which are subject to the state lodging tax shall also be subject to the county lodging tax in counties which have authorized such a tax. The county lodging tax must be collected at the location of the hotel

as defined in Reg-68-002.03.

009.07 Persons responsible for collecting and reporting the county lodging tax or the additional county lodging tax shall report such taxes on forms provided by the Nebraska Department of Revenue. Such forms shall contain such information as the Nebraska Department of Revenue deems necessary for the proper and efficient administration of the county lodging taxes.

009.08 Every person liable for the collection of the county lodging tax shall keep receipts, invoices, guest checks, and other such records as are necessary to establish the amount of tax for which he or she is liable.

(Sections 81-1251, 81-1253 and 81-1260, R.R.S. 1999, and sections 81-1254 and 81-1255, R.S.Supp., 2004. March 7, 2006.)

REG-68-010 OPTIONAL SERVICES

010.01 Charges by a hotel for optional services rendered to occupants are exempt from the lodging tax. The charges for the optional services must be stated separate from the charges for hotel occupancies, and the optional services cannot relate to provision of accommodations, such as additional beds or bedding.

010.02 Optional services include room service, porter or bellboy services, valet services, pay-for-view movies, wake-up calls, and charges for phone service.

010.03 The lodging tax is not the same as the sales tax on these items. Some of these items may be subject to the sales tax without being subject to the lodging tax.

(Section 81-1248, R.S.S., 1943. April 11, 1993.)

