
Coates' Canons Blog: Occupancy Taxes, Continued

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Over 200 officials from 60 N.C. local governments joined us for our

occupancy tax webinar originally broadcast on April 2. We received tons of questions before, during, and after the webinar, which meant we couldn't get to all of them on air. Today's blog addresses some of those questions we missed during the webinar plus a few of the more interesting discussion points we did cover.

If you missed the webinar, you can purchase it for on-demand viewing here. For an overview of occupancy tax basics, check out this earlier post.

On to the questions . . .

Are government employees who rent rooms exempt from paying occupancy taxes?

No, with the exception being federal government employees who pay for rooms using federal government credit cards that are billed directly to the government and not to the individual employee. (See this bulletin for more details.)

Otherwise, employees of federal, state and local governments who rent rooms in your jurisdiction are required to pay the applicable occupancy taxes on those rooms.

May local governments that pay occupancy taxes for rooms rented by their employees obtain refunds of those occupancy taxes?

No. Local governments can obtain refunds of local sales taxes on room rentals and other purchases under G.S. 105-164.14(c). But those refund provisions do not apply to occupancy taxes.

Are non-profits such as YMCA's exempt from occupancy taxes if they own and rent out cabins or other lodging facilities to the general public?

No, because non-profits are not generally exempt from local occupancy taxes.

Remember that the only property owners who should be exempt from collecting occupancy taxes from their renters are those owners exempt from sales taxes on room rentals under G.S. 105-164.4(a)(3) (made applicable to occupancy taxes by G.S. 153A-155 and G.S. 160A-215):

1. A privately owned residence/cottage rented for fewer than 15 days per year;
2. A rental to the same person of more than 90 continuous days; and,
3. Accommodations related to schools or camps that charge tuition or fees for enrollment.

A lodging unit offered for rental by a non-profit organization would be taxable assuming that the cabins or other lodging were not provided as part of a camp or other event for which the organization charges tuition.

BUT...as always, check your local occupancy tax bill because it may contain a special exemption for non-profits. A few counties including Orange and Wake, exempt "accommodations furnished by nonprofit charitable, educational, benevolent or religious organizations when furnished to further their nonprofit purpose."

Does a room rental to a corporation for 90 or more continuous days qualify for an exemption even if different corporate employees stay in that room during the rental period?

Yes. The term "person" used in G.S. 105-164.4(a)(3) includes a corporation. It's a winding road to that definition: G.S. 105-164.3, which defines the terms used all of the sales tax provisions including G.S. 105-164.4, adopts the definition of "person" used in G.S. 105-228.90. But the bottom line is that a room rental to the same corporation for more than 89 days should be exempt from local occupancy taxes regardless of who actually uses that room. This issue often arises when an airline reserves hotel rooms near an airport for extended periods of time for use by different flight crews.

With many extended rentals the full length of the rental period may not be known until after the rental ends, in which case a refund may need to be provided.

Consider a family that rents a beach house for two summer months, June and July 2014. The owner of that property must collect and remit taxes on that rental. If the family decides to extend the rental thru the end of August 2014, that rental would now be greater than 89 continuous days. The owner of the property would not need to collect taxes for the August rent and may seek a refund of the taxes paid on the rental for June and July.

The refund check should be sent to the owner, who should then return it to the tenant. But it's not the job of the taxing unit to make sure the owner does so; that would be a private dispute between owner and tenant in which the taxing should not get involved.

Should individual owners who rent their properties via on-line services such as AirBnB and VRBO.com be collecting and remitting occupancy taxes?

Yes. If a property owner rents out an accommodation for 15 or more days per year, then that owner should be collecting occupancy taxes from the tenants and remitting that tax to the relevant local government(s). It matters not whether the owner rents the property without assistance, contracts with a local rental agency, or uses an on-line rental service.

Note that after the enactment of [S.L. 2014-3](#), the 15-day minimum no longer applies to private residences that are rented out through rental agents. The revenue from the rental of a private house arranged through a rental agent is subject to occupancy tax even if the house is rented for less than 15 days in the year.

AirBnB reports that it will start collecting and paying taxes on behalf of its property owners in a few large U.S. cities, but none in North Carolina. VRBO.com says it has no plans do so anywhere. As a result, it will continue to be up to N.C. local governments to identify property owners using these rental services to remind them of their tax obligations. A quick search for North Carolina rentals on both sites showed 350 properties available on AirBnB and more than 6,000 on VRBO—that's a lot of potential local tax revenue!

Are rentals of campsites or RV sites that provide power and/or water subject to occupancy taxes?

No. The tax covers only the rental of “accommodations,” defined by G.S. 105-164.4(a)(3) as “a hotel room, a motel room, a residence, a cottage or similar lodging facility.” This definition suggests the rental must provide some type of structure in which the renter may lodge for the night.

Basic campsites, RV sites, and boat slips don’t provide lodging structures as part of the rental, so the tax should not apply. But I think the tax would apply to the rental of a campsite that included a tent or other lodging structure or to the rental of a houseboat.

May a tourism development authority (“TDA”) spend occupancy tax funds to promote an attraction or event located outside of the taxing unit?

Yes, assuming that the TDA can demonstrate that the taxing unit will benefit from additional tourism to the extra-territorial attraction or event.

Most local bills authorizing occupancy taxes require TDA’s to spend tax revenues “to promote travel and tourism” in the taxing unit or to “increase the using of lodging facilities . . . or to attract tourists or business travelers” to the taxing unit. (See S.L. 2009-429 for an example.)

We don’t have any court opinions on this issue, so the determination of permissible expenditures remains subjective. Reasonable people may disagree on what types of expenditures are likely to increase tourism in a given city or county.

That said, attractions or events held in neighboring cities or counties seem like reasonable targets for occupancy tax expenditures if visitors to those attractions or events are likely to lodge or eat in the taxing unit. The farther away the attraction or event is from the taxing unit, the less reasonable the occupancy tax expenditure becomes, of course.

For example, I don’t think anyone would take issue with the TDA for the town of Atlantic Beach spending occupancy tax funds to promote the N.C. Aquarium a few miles down route 58 in Pine Knoll Shores. But spending Atlantic Beach occupancy tax funds to promote the Battleship North Carolina 100 miles away in Wilmington would seem inappropriate.

The Atlantic Beach examples are completely fictional, but we’ve received similar questions from other cities and counties. Officials and residents in those localities were concerned that TDA members who owned hotels in multiple jurisdictions were more focused on increasing their own corporate revenue than with increasing the taxing units’ tourism.

There’s no bright-line test to apply in these situations, meaning it may be difficult to prove that a particular TDA expenditure was impermissible. Often the solution will be a political one rather than a legal one, keeping in mind that local governing boards usually have the authority to appoint TDA members.

Links

- canons.sog.unc.edu/wp-content/uploads/2014/04/hotel.png
- www.sog.unc.edu/courses/webinars/local-occupancy-taxes-webinar-demand
- canons.sog.unc.edu/?p=7399
- www.dor.state.nc.us/practitioner/sales/bulletins/section37.pdf
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- www.npr.org/blogs/alltechconsidered/2014/04/18/304564169/airbnb-to-start-charging-hotel-taxes-in-a-handful-of-cities
 - www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2009-2010/SL2009-429.html