Hospitality Industry Tax Issues

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Ohio | Department of Taxation

Agenda

- Sales Tax Requirements
- Use Tax Requirements
- County Lodging Tax
- Resort Area Tax
- Other Taxes that Hotels May be Required to Pay

Sales Tax Requirements

- R.C. 5739.01(B)(2)
  - All transactions by which lodging by a hotel is or is to be furnished to transient guests is a "sale" for purposes of sales and use tax.

Sales Tax Requirements

- "Hotel" (R.C. 5739.01(M))
  - Every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures.
    - Some exceptions will be covered in the lodging taxes area.

Sales Tax Requirements

- Transient Guest" (R.C. 5739.01(N))
  - Persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

Sales Tax Requirements

- Bed & Breakfasts (B&B)
  - A **B&B** with five or more rooms available to transient guests = a "hotel"
  - Sales tax is applicable to the total amount charged
    - Includes both room and food,
      - regardless of whether the amount attributed to food is separately stated.
  - A **B&B** which has fewer than five rooms available to transient guests ≠"hotel"
  - No sales tax on the amount attributed to room rental
  - Food is still being consumed on the premises.
    - All B & B's should separate the amount attributed to the room rental and the amount attributed to any meal.
    - If there is no separation between the two charges, sales tax would be due on the total amount charged.

Sales Tax Requirements

- **Test Your Knowledge**: Bob Smith owns six cabins in the Hocking Hills area. These cabins are dispersed over 15 acres. He advertises these cabins for rent. Does Bob Smith's Cabins meet the definition of hotel?

Sales Tax Requirements

- Yes, Bob Smith advertises these cabins as sleeping accommodations offered to the public. Additionally, Bob Smith has six cabins (i.e., rooms). The rooms do not need to be in the same structure.

Sales Tax Requirements

Food Consumed on Premises

- *Warren Hills Investment Co v. Limbach*, Ohio BTA 87-J-84 (February 19, 1988)
  - “The room which has been rented to the hotel guest is on the "premises" which is under the control of the vendor of the food. The [hotel operator] controls both the room and the food service.” 1988 Ohio Tax LEXIS 264, *9
- ST 2012-01 – Restaurants and Other Food Vendors – Issued December 2012, Revised August 2014

Sales Tax Requirements

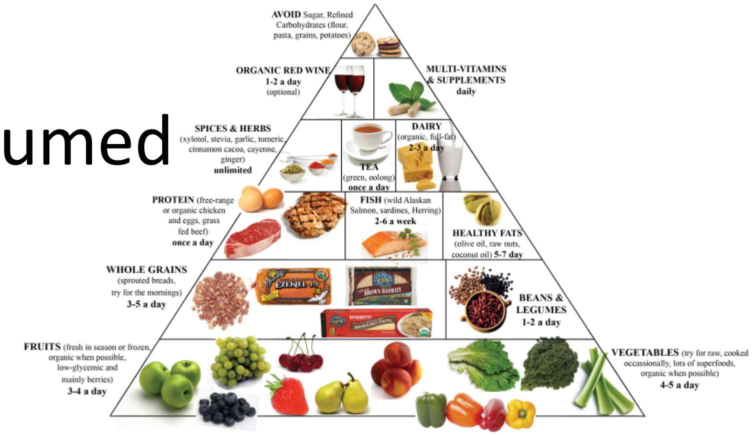
- All retail sales of food are presumed to be taxable, unless the vendor establishes that the sale is exempt.

Sales Tax Requirements

Food for Human Consumption

- *"…no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold."* Ohio Const. Article XII, Section 3(C). See also R.C. 5739.02(B)(2).

Sales tax **does apply** to food consumed on-premises. See R.C. 5739.01.



Sales Tax Requirements

- R.C. 5739.01 (EEE)(1) defines food as follows: "Food" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.
- "Food" does not include alcoholic beverages, dietary supplements, soft drinks, or tobacco.

Sales Tax Requirements

- R.C. 5739.01 (EEE)(2)(c) defines "soft drink" as: …nonalcoholic beverages that contain natural or artificial sweeteners.
- "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contain greater than fifty per cent vegetable or fruit juice by volume.

Sales Tax Requirements

- R.C. 5739.01 (K) defines “premises” as follows: …any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.

Sales Tax Requirements - Restaurant

Hotels with Restaurants - Exemption

– R.C. 5739.02(B)(27) – Sales to persons **licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code**, of tangible personal property primarily used directly for the following:

- To prepare food for human consumption for sale;
- To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;
- To clean tangible personal property used to prepare or serve food for human consumption for sale.

Sales Tax Requirements

Hotels with Restaurants - Exemption

- ST 2010-01 Sales and use Tax: Food Service – Equipment and Supplies Used in the Food Service Industry

Sales Tax Requirements

- **Test Your Knowledge**: Would a refrigerator that displays the food to the consumer be taxable to the restaurant?

Sales Tax Requirements

- Yes – Refrigerators for display are taxable.

- Refrigerators in the kitchen would be exempt because they are used "to preserve food which has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection of the consumer; … "(R.C. Section 5739.02 (B)(27)(b))

- Refrigerators that cool only beverages regardless of their location are taxable. They are not preserving food.

Use Tax Requirements

- **What is Use Tax**?
  - Use tax is imposed on the "storage, use or other consumption" of all tangible personal property and the receipt of certain services that are subject to sales tax.
  - Purchases that are properly exempt from sales tax are also exempt from the use tax.
  - Use tax must be paid on all purchases made by Ohio residents and businesses if the proper amount of sales tax has not been paid to the vendor, seller, or service provider.

- **Common Situations**:
  - An Ohio customer makes a mail order purchase from an out-of-state seller
  - Purchaser improperly claims exemption

Use Tax Requirements

- Are the items "resold"?
  - *Hyatt Corp. v. Limbach*, 69 Ohio St.3d 537, 1994-Ohio-342, 634 N.E.2d 995
    - "The transaction by which lodging was furnished by a hotel to a transient guest for a consideration contemplated the transfer of possession or a license to use or consume tangible personal property by the hotel to the guest of both real property and items of tangible personal property. Items can be resold to the guest in the same form in which the items were purchased by the hotel…"
  - These purchases are not subject to tax because the business is required to collect and remit sales tax when it rents the tangible personal property to its customer.

Use Tax Requirements

- Are the items “resold”?
  - Common Area v. Guest Rooms
    - Items in a common area are taxable while items in the guest rooms are considered “resold”.
  - Examples
    - carpet cleaning,
    - carpet,
    - exterminating services,
    - furniture, and
    - security services

Use Tax Requirements

- Brooms, dust pans and scouring powders are deemed necessary to maintain the appearance and cleanliness of the rooms rented by a hotel, however such items are not exempt.

Use Tax Requirements

- Tables and chairs used for the seating in the restaurant or bar area is a part of the restaurant and is exempt.
- However, tables and chairs used for the free breakfast or happy hour seating are taxable.
- Common area seating is taxable.

Use Tax Requirements

- Complimentary items at a "happy hours" such as alcoholic beverages are taxable.

Use Tax Requirements

- **Test Your Knowledge**: Would food preparation and serving equipment (trays) for complimentary food and drinks be taxable or exempt?

- Assume that the location is a food service operation pursuant to R.C. 3717.43.

Use Tax Requirements

- When complimentary food is served, the hotel incurs a use tax liability on purchases of food preparation and serving equipment.
- In addition, serving equipment such as trays for a full service restaurant would be taxable.
- Food preparation and preservation equipment and cleaning of such equipment for a full service restaurant is exempt pursuant to R.C. 5739.02 (B)(27).

Construction Contracts in Hotel Scenarios

- R.C. 5739.01(B)(5) – for sales tax purposes a “sale” does not include “a construction contract in which tangible personal property is incorporated into a structure or improvement on and becoming a part of real property”
- A construction contractor is the consumer of all tangible personal property incorporated into realty as a part of a construction contract

Construction Contracts in Hotel Scenarios

- Ohio Admin. Code 5703-9-14 -
  - A "construction contract" is any agreement, written or oral, pursuant to which tangible personal property is or is to be transferred and incorporated into real property, as defined in R.C. 5701.02, so as to become a part thereof without regard to whether it is new construction or an addition to or alteration of an existing building or structure.
  - A "construction contractor" is any person who performs such an agreement, whether as prime contractor or subcontractor.

Construction Contracts in Hotel Scenarios

- – Tangible personal property that is permanently affixed to real property, but that primarily benefits the business conducted on the premises by the occupant, is a "business fixture," as defined in R.C. 5701.03, and retains its status as personal property after such affixation is made.
- – An agreement to transfer and install a business fixture is a sale and not a construction contract.

Construction Contracts in Hotel Scenarios

- R.C. 5701.02 (A)

- “Real Property”, “Realty”, and “Land” include land itself, all growing crops, including deciduous and evergreen trees, plants, and shrubs, with all things contained therein, and
  - Unless otherwise specified in this section or section R.C. 5701.03, all buildings, structures, improvements, and fixtures of whatever kind on the land

Construction Contracts in Hotel Scenarios

- R.C. 5701.03 (B)
  - “Business Fixture” means an item of tangible personal property that has become **permanently attached** or affixed to the land or to a building, structure, or improvement, and that **primarily benefits** the business conducted by the occupant on the premises and not the realty.
  - “Business Fixture” does not include **fixtures that are common to buildings**, including (but not limited to)
    - heating
    - ventilation
    - air conditioning systems primarily used to control the environment for people or animals
    - tanks
    - towers
    - lines for potable water or water for fire control
    - electrical and communication lines
    - other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises

Construction Contracts in Hotel Scenarios

Funtime, Inc. v. Wilkins, 2004-Ohio-6890

- If item does not meet definition of real property in 5701.02, item is tangible personal property
- If item meets definition of real property in 5701.02, item is real property unless otherwise specified as tangible personal property

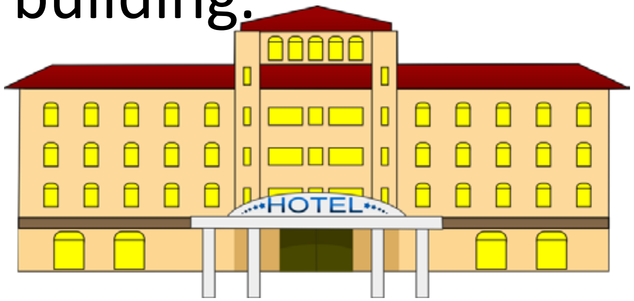
Construction Contracts in Hotel Scenarios

- Purchased and incorporated into hotel rooms
  - Purchases of fire alarms
  - Central Air HVAC Units
  - Fireplace units
  - Doors
    - Real property improvements (common to buildings)
- Construction contracts are not "resold" to the hotel guest.

Construction Contracts in Hotel Scenarios

- Hotel/Motel access card readers for rooms are considered real property.
  - Generally a construction contract
  - Software is considered taxable as TPP and not resold

- Concrete canopies used to protect guests from weather are taxable as TPP unless attached to building.
  - i.e., business fixture
  - Not resold as part of the room.



Construction Contracts in Hotel Scenarios

- Test Your Knowledge:
  - Would a bathroom remodel in the common areas be taxable to the hotel?
  - Alternatively, would a bathroom remodel in the guest rooms be taxable to the hotel?

Construction Contracts in Hotel Scenarios

- Both would be taxable to the contractor as they would be construction contracts and therefore cannot be considered resold.

Construction Contracts in Hotel Scenarios

- For more detailed information about construction contracts see March 2015 OVTA
- “Construction Contractor Sales & Use Tax Returns”
- http://www.tax.ohio.gov/Researcher/VTA/Archive/March2015.aspx

Local Governments Lodging Taxes

- Taxpayers – (R.C. 505.56 and R.C. 5739.08) - This tax is paid by operators of hotels, motels, rooming houses and other facilities providing lodging accommodations for transient guests.

  – Not administered by the Department of Taxation

Local Governments Lodging Taxes

- Municipal/Township Lodging Taxes
  - R.C. 505.56 and R.C. 5739.08–
    - Municipalities or townships may levy a lodging tax of up to 3.0 percent, plus an additional tax of up to 3.0 percent if they are located (wholly or partly) in a county that has not levied a lodging tax.
    - This tax can be imposed on locations with less than 5 rooms. (R.C. 5739.09(G))

Local Governments Lodging Taxes

- County Lodging Tax
  - R.C. 307.672 and R.C. 5739.09–
    - Counties may levy a lodging tax of up to 3.0 percent, but may not levy such a tax in any municipality or township that has already levied the additional lodging tax.

Local Governments Lodging Taxes (Example)

GOVERNMENT RESIDENTS VISITORS BUSINESS A-Z DIRECTORY EMPLOYMENT ONLINE SERVICES CALENDAR

Cuyahoga County
Fiscal Officer

Search

- Home
- Contact Information
- Services
- Appraisal
- Budget Commission
- Real Estate Services
- Real Property
- Recorded Documents
- Estate Tax
- General Services
- Community Services
- General Accounting
- Lodging Occupancy Tax Department
- Maps & Digital Imaging
- Microfilming Center
- Auto Title Division
- Office of Budget & Management
- Audit Committee
- County Treasurer
- Board of Revision
- Consumer Affairs
- Weights & Measures

You are here: Home > Lodging Occupancy Tax Department

Lodging Occupancy Tax Department

The Lodging Tax Department had moved: Please send any correspondence to:

Lodging Tax Department
Cuyahoga County Fiscal Office
2079 East Ninth St., 3rd Floor 121-E
Cleveland, OH 44115

The County Fiscal Officer acts as an agent for Cuyahoga County with respect to the collection and disposition of the Cuyahoga County excise tax on lodging of transient guests. The department that handles these varied duties and responsibilities is the Lodging Occupancy Tax Department.
The powers and duties of this department are defined by the Cuyahoga County Code of Regulations, which was revised in September, 2000. A copy of this Code of Regulations is attached to this Home Page. The Lodging Occupancy Tax Department has recently relocated to the second floor of the Cuyahoga County Fiscal Office. All general questions or concerns can easily be directed and/or handled by calling at (216) 698-2540.

The main purpose of this department is to collect the 5.5% County bed tax which will then be disbursed to the municipalities, the Convention & Visitor's Bureau of Greater Cleveland and the Cleveland Cuyahoga County Port Authority.

In order to regulate the checks and balances for the above-mentioned County bed tax, the Lodging Occupancy Tax Department conducts countywide audits to approximately 133 current establishments.
Our services are often called upon to answer questions regarding the most accurate ways to monitor the tax responsibilities at these establishments.

r.cuyahogacounty.us/

Local Governments Lodging Taxes (Example)

- **What is a County bed tax?**
  - As of January 1, 2011, the Bed Tax rate is 5.5%. This 5.5% Bed Tax rate is charged to every transient guest occupying a room or rooms with sleeping accommodations in a lodging establishment.
- **Who must file County bed taxes?**
  - Every establishment kept, used, maintained, advertised, or held out to the public to be used as a lodging establishment where sleeping accommodations are offered to transient guests, is required to file a monthly Occupancy Tax Return.
- **When is the County bed tax filed?**
  - The County bed tax is filed on a monthly basis by way of an Occupancy Tax Return form which is due in the Lodging Tax Department no later than the 21st day of the month after which the tax is collected. This must be USPS postmarked (NOT METERED) on or before the 21st of each month to be considered timely.
- **Are Bed and Breakfast facilities required to collect Lodging Tax?**
  - Bed and Breakfast facilities which have four or less rooms used for sleeping accommodation are subject to the Cuyahoga County Bed Tax Regulations.
- **Does each city within Cuyahoga County collect their own bed tax or does the County impose the only bed tax?**
  - The County recognizes that the Cities of Cleveland, Beachwood, Bedford Heights, Broadview Heights, Brooklyn, Brook Park, Euclid, Fairview Park, Independence, Maple Heights, Mayfield Heights, Middleburg Heights, North Olmsted, Rocky River, Solon, Strongsville, and Westlake; and the Villages of Mayfield, Oakwood, and Orange are presently levying a hotel lodging excise tax.

Local Governments Lodging Taxes

- No more than a total of 6% unless included in exception list.
  - Special Lodging Taxes

Am. Sub. H.B. 64 of the 131st General Assembly (Just a few examples)

- **Sports Park** –
  - Authorizes a county with a population between 75,000 ad 78,000 to increase its rate by 1% for the purpose described in R.C. 307.679 or promote travel and tourism in the county.
  - Allows the county to pledge any lodging tax it levies towards financing a sports park.
- **Agricultural Society** –
  - Authorizes a county with an agriculture society hosting an annual harness horse race with at least 40,000 per day attendees to levy a lodging tax of up to 3%.
  - The tax is subject to approval of county voters and may be levied for no more than five years.
  - Requires that the tax revenue be used for permanent improvements at sites where the society conducts events, paying costs of maintaining or operating such permanent improvements, or paying the costs of administering the tax.

Local Governments Lodging Taxes

- Hotel Intermediaries
  - Are online travel companies “vendors”?
  - City of Columbus, Ohio v. Hotels.com, 693 F. 3d. 642
    - City argued that the companies were required to pay a guest occupancy tax on the difference between the contractual "wholesale" room rate charged by hotels to the companies and the higher "retail" rate the companies charged to customers.

Local Government Lodging Taxes

– Decision applies to local lodging taxes
  - Online travel companies were not hotel “vendors” under local laws;
  - Companies were not hotel “operators” under local laws;
  - Companies were not “hotels” under local laws;
  - Local laws did not impose taxes on charges for companies' services or their booking fees; and
  - Localities did not present any evidence that companies represented to customers that they were charging them for “taxes” that were not remitted to localities.

Local Governments Lodging Taxes

- **Test Your Knowledge**: Jim stays at XYZ hotel and after he returns home, he notices (and has concerns about) a 3% tax on his bill which is in addition to the applicable sales tax. Who should he contact about this 3% tax in order to understand it?

Local Governments Lodging Taxes

- The Department of Taxation does not administer these taxes. Although we are familiar with the statutes and are aware of many local government lodging taxes, **any questions should be directed to the county or municipality** which enacted this tax.

Resort Area Gross Receipts Tax

- (R.C. 5739.101 to R.C. 5739.105)

- A gross receipts tax measured by receipts derived from engaging in certain business activities within the resort area.
  - Not a sales tax
  - Not a tax on the individual consumer

- Current Resort Area – Kelly's Island, Village of Put In Bay and Township of Put In Bay

Resort Area Gross Receipts Tax

- H.B. 64 – Effective September 29, 2015 –
  - Taxpayers may separately or proportionately bill or invoice, but amounts remain part of the price.
  - Tourism Development District (TDD)
    - TDD gross receipts tax (R.C. 5739.101, 5739.102, and 5739.103)
      - The bill authorizes a subdivision creating a TDD to levy a gross receipts tax of up to 2% on business' gross receipts derived from making sales in the TDD (excluding food sales).
      - A subdivision levying the tax must do so before 2019.

Resort Area Gross Receipts Tax

- **Test Your Knowledge**: Can resort tax be charged to the customer as part of the total tax percentage?

Resort Area Gross Receipts Tax

- NO

Businesses are currently allowed to transfer the tax to the consumer; however it has to be a part of price. This amount would then become taxable for state taxes as it would be part of the total price of the service/product.

Other Taxes that Hotels May be Required to Pay

- Commercial Activity Tax
  - The commercial activity tax (CAT) is an annual tax imposed on the privilege of doing business in Ohio, measured by gross receipts from business activities in Ohio. Businesses with Ohio taxable gross receipts of $150,000 or more per calendar year must register for the CAT, file all the applicable returns, and make all corresponding payments.

- Employer Withholding
  - With rare exception, employers that do business in Ohio are responsible for withholding Ohio individual income tax from their employees' pay. Ohio employers also have the responsibility to withhold school district income tax from the pay of employees who reside in a school district that has enacted such a tax.

Resources

- www.tax.ohio.gov
  - FAQs
  - Finder
    - Provides information on local tax rates for all addresses in Ohio
  - Forms
  - Info releases
    - Technical advisories that offer detailed explanations of selected laws, rules, and rulings that govern the taxes administered by the Ohio Department of Taxation (ODT)
  - Email alerts
    - An email notification system that provides updates on tax topics of your choice

Contact Us

- Phone
    - 888-405-4039
- Fax
    - 614-466-1588
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      Columbus, OH 43216-2476
- Email
    - Via our website at www.tax.ohio.gov

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