



STATE OF ARKANSAS
**Department of Finance
and Administration**

OFFICE OF THE DIRECTOR

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May 23, 2019

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: In the Matter of [REDACTED]
Request for Revision
Docket Numbers: 19-222, 19-223, and 19-224

[REDACTED]:

This letter is in response to your request for a revision of the Administrative Decision entered in the above-referenced matter on January 22, 2019. Your letter, dated February 5, 2019, is considered a timely filed request for revision, and this letter will constitute the final decision of the Arkansas Department of Finance and Administration (the "Department") under the provisions of Ark. Code Ann. § 26-18-405 (Supp. 2017).

FACTS

This matter involves the audit of [REDACTED] ("Taxpayer") for sales tax, use tax, and special excise tax. Taxpayer is in the business of operating two hotels in the city of [REDACTED], Arkansas. The audit resulted in additional tax, penalty, and interest being assessed. The Taxpayer timely protested the audit.

The audit of the Taxpayer revealed that the Taxpayer had failed to appropriately collect and remit tax on the rental of hotel rooms to transient guests, failed to collect appropriate documentation on sales it deemed exempt, and failed to collect tax on cleaning fees. On the first point, the Department found that the Taxpayer failed to identify certain individuals as "transient guests" and did not collect sales and special excise tax on rentals to them. In those scenarios, a guest rented a hotel room for less than a month-to-month basis. Taxpayer claimed that because the shorter time period was adjacent to a month-to-month rental, Taxpayer should not be required to pay tax.

The Hearing Officer sustained the assessment in an opinion delivered January 22, 2019. Taxpayer delivered a timely request for revision stating:

My name is [REDACTED], owner of the [REDACTED]. I currently operate two hotels in [REDACTED], Arkansas. I have paid all my taxes on time. At my hotel, guests often have extended stays in which they occupy rooms for months at a

time. Some pay their hotel rent at the beginning of the month; however, based on their pay schedule, some have to break up the month payments into several payments throughout the month. Because the hotel business is competitive, we allow our guests to make several payments throughout the month.

You also requested a meeting to discuss this matter and explain the documentation you presented in support of your position in this case. At the meeting, you supplied additional arguments in support of your request for a revision of the administrative decision. You indicated that you were requesting a waiver of the month-to-month requirement for non-transient guests. Additionally, you explained that if you were required to collect tax on periods that were less than month-to-month, you would lose business to competing hotels.

ANALYSIS

All sales of tangible personal property and certain specifically enumerated services within the State of Arkansas are generally taxable. Ark. Code Ann. § 26-52-301(1) (Supp. 2017). The Taxpayer is generally liable for the collection and remittance of sales tax upon its sales of tangible personal property and taxable services. Ark. Code Ann. § 26-52-508 (Supp. 2017).

Additionally, the service of furnishing rooms or other accommodations by a hotel such as the properties operated by the Taxpayer to transient guests are taxable. Ark. Code Ann. § 26-52-301(3) (Supp. 2017). Transient guests are defined as “those who rent accommodations other than their regular place of abode on less than a month-to-month basis[.]” *Id.* at (3)(A)(ii). Arkansas Gross Receipts Tax Rule GR-8(B) provides additional guidance regarding the definition of “transient guests,” stating as follows in relevant part:

2. “Month to month” means a rental that satisfies the following criteria:
 - a. Rental payments are due in monthly installments for a monthly rental period; and
 - b. Thirty day notice of termination is required for either party to terminate the lease; and
 - c. The obligation of the renter to pay the monthly rental is unaffected by the renter’s decision to leave the accommodations before the end of the monthly period (i.e. the entire month’s rent is owed regardless of the renter staying at the accommodations the entire month).
3. A rental shall not be considered “month to month” if any of the following criteria are present in the rental arrangement:
 - a. The renter can terminate the stay without notice and obligation to pay ceases upon termination of the stay; or
 - b. The rental payment obligations accrue on daily or weekly increments regardless of the billing frequency.

As a preliminary matter, the Director lacks the statutory authority to grant general waivers of tax or to grant waivers based on a claim of market competitiveness. Accordingly, I cannot grant your request for a waiver of assessed tax on these bases.

Moreover, the transactions you identify in your revision request are reflective of rentals that are to transient guests. Arkansas Gross Receipts Tax Rule GR-8(B) specifically states that month-to-month rentals must have rental payments that are due in monthly installments. The rule also provides that rental obligations that accrue daily or weekly (regardless of billing frequency) are not considered month-to-month. It also provides that month-to-month rental obligations would not be affected by the customer's decision to leave early.

According to your testimony at the hearing and subsequent revision request meeting, you provided guests with the ability to pay on a less than month-to-month frequency and you allowed for some month-to-month guests to terminate the rental prior to the completion of the full month and did not bill for the entire month rental. Considering the relevant statutes and rules, it is determined that the decision rendered by the hearing officer in this matter should be sustained in full.

CONCLUSION

For the reasons set forth herein, the Administrative Decision is sustained. This concludes your administrative remedies under the Arkansas Tax Procedure Act. Relief from this decision may be sought according to the procedure set forth in Ark. Code Ann. § 26-18-406 (Supp. 2017).

Sincerely,

Walter Anger
Deputy Director and
Commissioner of Revenue