



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

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February 20, 2018

**Via E-mail** [REDACTED]

Re: Airline Contract/Hotel Tax  
Opinion Number 20171221

Dear [REDACTED]:

You have requested a legal opinion on behalf of [REDACTED] in [REDACTED], Arkansas ("Hotel") concerning the taxability of room rental accommodations pursuant to a Services Agreement for Hotel Accommodations ("Agreement") with [REDACTED] a [REDACTED] corporation ("[REDACTED]"). Your email of December 21, 2017 states:

*I need some assistance on some tax questions regarding airlines. We have an airline that stays consecutively with us every day. The Airline averages about 20-24 per day every day and the rooms are checked in and out every day. The billing is done monthly. The questions that I have are regarding with the tax portion. I have attached the airline contract and information from the [REDACTED] [REDACTED] for backup.*

*Since the airline stays with us every day are they eligible for tax exemption on rooms stays? If they are not, can you explain what makes the airline not eligible for tax exemption?*

You are seeking guidance regarding the taxability of room rentals pursuant to a written agreement. Before addressing the specifics of your request, it is necessary to discuss several points that are applicable to this opinion as a whole.

ARKANSAS SALES AND USE TAX GENERALLY

As a preliminary matter, "sales and use tax is levied upon the gross proceeds or gross receipts derived from all sales of tangible personal property and certain enumerated services." *See* Ark. Code Ann. §§ 26-52-301 (Supp. 2017) and 26-53-101 (Repl. 2014). When a sale of tangible personal property, or the performance of such an enumerated service, occurs in Arkansas, a taxable transaction occurs and tax should be collected and remitted. *See* Arkansas Gross Receipts Tax Rule GR-5.

Currently, the Arkansas Gross Receipts Act of 1941, § 26-52-101 *et seq.*, and the Arkansas Compensating Tax Act of 1949, § 26-53-101 *et seq.* levies a state sales and use tax rate of 6.5%. In addition, there is levied a tourism tax at the rate of 2% on the gross proceeds or gross receipts derived from "the service of furnishing a guest room, suite, or other accommodation by a hotel, motel, lodging house, tourist camp, tourist court, property management company, or any other provider of an accommodation to a transient guest." *See* Ark. Code Ann. § 26-63-402 (Repl.

2008). *See also* Arkansas Special Excise Tax Rule ET-4(E). “Transient guest” means a person that rents an accommodation, other than the person’s regular place of abode, on less than a month-to-month basis. *See* Ark. Code Ann. §§ 26-52-301(3)(A)(ii) (Supp. 2017) and 26-63-402(1)(B) (Repl. 2008). *See also* Arkansas Gross Receipts Tax Rule GR-8(B).

#### GR-8. SERVICES SUBJECT TO TAX-LODGING

Arkansas Gross Receipts Tax Rule GR-8, which interprets Ark. Code Ann. § 26-52-301(3) (B) and is generally applicable to § 26-52-102, states:

A. **The service of furnishing rooms**, suites, condominiums, townhouses, rental houses or other accommodations to transient guests **by hotels**, motels, apartment hotels, lodging houses, tourist camps, hunting lodges, tourist courts, bed and breakfast properties, property management companies or any other provider of accommodations **to transient guests is subject to gross receipts tax.**

B. 1. “Transient guests” are defined as those who rent accommodations other than their regular place of abode on **less than a month-to-month basis.**

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 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.

4. Examples.

Example 1: Renter A rents a room from a hotel for a 6 month period. Renter A owes the monthly rental payment for the entire month at the beginning of each month. Renter A shall give a 30 day notice if A wants to terminate the rental prior to the end of the 6 months. Renter A is not a transient guest and the rental is not taxable.

Example 2: Renter B pays daily. Renter B occupies the rented accommodations for a period of 34 days. Renter B does not pay, and is not obligated for the payment of days other than the 34 days of occupation of the accommodations. Renter B is a transient guest, and tax should be collected on the daily charges.

Example 3: Renter C is staying at the accommodations indefinitely. Renter C pays the bill at the conclusion of each month. Renter C's bill accrues daily charges. Renter C can leave the

accommodations at any time. Renter C is a transient guest and tax should be collected on the entire term of the rental even though Renter C occupied the accommodations for longer than 30 days.

**Example 4:** Renter D company has a contract calling for the rental of a **certain number of rooms** on an annual basis. Different people stay in the rooms each night and different rooms within the hotel are used for this purpose. The company is not a transient guest and tax is not required to be collected on the rental charges. [Emphasis added].

#### THE ROOM RENTALS DESCRIBED IN THE AGREEMENT ARE TAXABLE

The Agreement indicates that Hotel entered into a five-year contract with [REDACTED], together with [REDACTED] and its subsidiaries (collectively, “Airline”) for the purpose of providing “hotel accommodations services, transportation and other services for the benefit of crewmembers (including pilots in training), and other employees (collectively “Guests”).” In the Agreement, Hotel sets forth the guaranteed room rate for Airline’s Guests for a five-year period.

The Agreement specifically provides that Hotel shall “set aside a minimum of zero (0) to a maximum of twenty (20) rooms per day” for Airline’s crewmembers, and Airline must, on or before the twentieth (20<sup>th</sup>) day of each month, provide Hotel with a room requirement schedule specifying the actual number of rooms Airline will need the following month. On those occasions when Airline requires more than the number of rooms listed on the schedule, Hotel will make every reasonable effort to house the additional Airline crewmembers, in rooms of an equal or higher standard, at the rate(s) set forth in the Agreement. Airline is billed for the rentals monthly.

The Agreement provides for the cancellation of a room with proper notice. Airline may cancel a room reserved pursuant to the room requirement schedule provided notice is given to Hotel as early as possible and not less than 2 hours before flight arrival time. Hotel may bill Airline for the cancelled room provided it submits an occupancy report to Airline demonstrating a 100% booked occupancy rate on the night the room remained on reserve and Hotel was not able to rent the reserved room to another paying guest.

Based upon the terms of the Agreement, the rooms appear to be rentals on a less than month-to-month basis as provided in GR-8(B)(2). Typically, as provided in Example 4 above, when an organization, such as an airline, enters into a binding written contract for overnight guest accommodations, such agreement provides for a *certain number of rooms* for thirty days or more. As such, that organization will qualify for the tax exemption due to the continuous use of a set number the rooms.

Here, the number of rooms Hotel is required to set aside varies from a minimum of zero to a maximum of twenty depending upon the schedule provided to Hotel each month. In order to qualify for the exemption, the contract must provide for the rental of a room or a number of rooms on a month-to-month basis or longer. The Agreement between Hotel and Airline not only provides for zero rooms to be set aside on any given month, it further provides an avenue for the cancellation of a set aside room with a two-hour notice. As such, Airline’s Guests will

be deemed “transient guests” who rent accommodations other than their regular place of abode on less than a month-to-month basis. Accordingly, the rooms under the Agreement are not eligible for the exemption regardless of whether such Agreement extends for more than thirty days.

This opinion is based on my understanding of the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules and regulations. Any change in the facts or law could result in a different opinion. A legal opinion may only be relied upon by a seller if it is addressed to him or is tendered by a customer to whom it is addressed and only to the extent that all material facts relative to the sale or transaction in question are contemplated by the legal opinion request and the legal opinion. A letter opinion may not be relied on if more than three (3) years old, but may be renewed on request.

Sincerely,

Lisa Ables  
Revenue Legal Counsel

Enclosure