

Technical Information Release is designed to provide immediate information of changes in tax laws administered by the Department for the policy positions of the Department as a service to taxpayers and practitioners. A Technical Information Release represents the position of the Department on the limited issues discussed herein based on current law and Department interpretation. For the current status of any tax law, practitioners and taxpayers should consult the source documents (ie., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.)

Questions specific to this Technical Information Release should be directed to the New Hampshire Department of Revenue Administration, Audit Division, 45 Chenell Drive, Concord, NH 03301 or (603) 271-3400 .

Mandatory Gratuities & Package Deal Offerings

Effective May 1, 2002, the Legislature made changes to the meals and rooms tax [RSA 78-A]. These changes clarify the non-taxability of mandatory gratuities and the treatment of package deals that are periodically offered by operators. Both of the changes are contained within RSA 78-A:6-a, Exception to Tax. The statutory language was arrived at through a joint effort of the NH Lodging and Restaurant Association and the Department.

Mandatory Gratuities

Mandatory gratuities that are added to the cost of a meal or room are not subject to tax if **all** of the following requirements are met. The amount of the gratuity is:

- Not used as a supplement to or in lieu of wages or as a pool from which bonuses are paid to managerial personnel;
- Paid to the service personnel providing the service for which it was charged;
- Separately stated on the purchaser's or consumer's contract or receipt;
- Usual and customary; **and**
- Substantiated by the payroll or other business records of the operator.

Failure to meet all of the requirements causes the gratuity, or a portion of the gratuity, to become taxable.

The mandatory gratuities that are arranged between an operator and a motorcoach service provider or other businesses making group purchases on behalf of consumers must also meet the above requirements. The gratuity does not have to be separately stated to the motorcoach provider's or group purchaser's customer.

In both circumstances, the exception to tax is limited to the amount of the gratuity that is actually received by the service personnel providing the service for which the gratuity was charged.

The following examples illustrate the application of the statutory language regarding mandatory gratuities. The parenthetical information next to the dollar amounts in the examples are for instructional purposes and would not be part of the invoice.

EXAMPLE #1

Facts:

A function is held at a restaurant or at a catering/function hall.

The function consists of food and beverage charges, room/hall rental and a mandatory gratuity of 18%.

This gratuity is paid over in its entirety through payroll to the service personnel providing services at the function.

The service employees to which the gratuity is paid also receive at least the mandatory minimum hourly wage for their position.

The bill to the purchaser is shown as follows:

Food Items	\$1,500.00
Beverages	800.00
Room Rental	500.00
Gratuity @ 18%	414.00
Tax @ 8%	184.00
Total Due	\$3,398.00

Department Determination:

Based on the fact that the treatment of the gratuity by the operator meets all of the requirements, the \$414.00 gratuity in this example would not be taxable. The gratuity is being paid through payroll to the service employees who worked at the function [RSA 78-A:6-a II. (b)]. The gratuity is separately stated to the purchaser [RSA 78-A:6-a II. (c)]. It is in addition to and not a substitute for the required hourly wage [RSA 78-A:6-a II. (a) & (e)], and the charge of a gratuity at a function is usual and customary [RSA 78-A:6-a II. (d)].

The determination for this scenario would be the same if all of the above were true except that the function was held at a location that also offered sleeping accommodations. The only difference would be that the room rental would also be taxed.

EXAMPLE #2

- **Facts:**

- 1. Utilize facts 1 through 4 of example #1.
- 2. The bill to the purchaser is shown as follows:
 - Function held on May 1, 2002:
 - Food items, beverages, room rental, gratuity and tax
 - Total Due \$3,431.00

Food Items	\$1,500.00
Beverages	800.00
Room Rental	500.00
Gratuity @ 18%	(on food and beverage only) 414.00
Tax @8%	(on food and beverage only) 217.00
Total Due	\$3,431.00

The determination for this scenario would be the same even if the operator subsequently included the above calculation within the business records. If the gratuity is not separately stated to the purchaser it is taxable [RSA 78-A:6-a, II(c)].

This scenario does not meet the exception provided under RSA 78-A:6-a VI. for single aggregate charges, or package deals because the exception pertains to the allocation of items which **are not customarily associated** with the purchase of a taxable room or taxable meal.

EXAMPLE #3

Facts:

- 1. Use facts 1, 2 and 4 of example #1.
- 2. This gratuity is paid through payroll as follows: 75% divided evenly among waitstaff, 10% to bartender, 5% to busboy, 10% to management personnel, such as a function coordinator or a shift supervisor.
- 3. The bill provided to the purchaser shows the following:
- Function to be held on May 1, 2002:

Food Items	\$1,500.00
Beverages	800.00
Room Rental	500.00
Gratuity @ 18%	(on food and beverage only) 414.00
Tax @8%	(on food, beverage, and part of the gratuity) 187.00
Total Due	\$3,401.00

Department Determination:

The gratuity in this example would be partially taxable. The amount of the gratuity being paid to managerial personnel who are not providing the service for which the gratuity was charged (function coordinator and shift supervisor) is taxable [RSA 78-A:6-a II. (a) and (b) and RSA 78-A:6-a IV]. The gratuity is being charged and paid for the service of the meal. Therefore, 10% of the gratuity, or \$41.00, is subject to tax.

Package Deal Offerings

A new subparagraph was added to the exception to tax paragraph under RSA 78-A:6-a. Subparagraph VI provides the allocation between taxable and non-taxable components for single aggregate charges. The allocation is permitted only when one or more of the package deal items included are not customarily associated with the purchase of a taxable meal or taxable room. If the package item or service is part of the standard room rental or meal, the entire cost to the consumer is subject to the tax.

The portion of the cost that would not be subject to tax would be equal to the amount paid by the operator to the outside vendor for the item. If no amount is paid to an outside vendor, the non-taxable portion of the allocated cost is the amount over and above the amount which a consumer would be ordinarily charged for the room or meal outside of the package deal. In instances where part of the package involves gratuities, the amount allocated to gratuities will be non-taxable provided it meets the requirements contained in RSA 78-A:6-a, II(a), (b), (d) and (e).

The operator is required to maintain the documentation such as, vendor invoices, contracts and other documents, necessary for the department to determine the allocation of costs and the proper application of tax. Such records must be retained in accordance with the statute of limitations and Rev 223.11

The following example illustrates the application of the statutory language regarding package deal offerings.

EXAMPLE #4

Facts:

- 1. The operator's hotel offers a package deal to the public which includes a two-night stay at the hotel, breakfast each morning and admission tickets to a nearby amusement park.
- 2. Admission tickets are available at the front desk for separate purchase by guests and the invoice to the operator from the amusement park charges \$12.50 per ticket.
- 3. Gratuity is paid through payroll to housekeeping staff and waitstaff servicing the individuals.
- 4. The service employees to which the gratuity is paid also receive at least the mandatory minimum hourly wage for their position.
- 5. The bill to the customer is shown as follows:

Room #XXX, 2 occupants May 1, 2002-May 2, 2002 Package ABC \$207.44

- 6. Operator records reflect the following:

Room #XXX May 1, 2002	\$59.99
Breakfast May 2, 2002	12.99
Amusement park admission tickets (2)	25.00

Gratuity May 1, 2002 - 17%	12.40
Tax May 1, 2002 - 8%	5.84
Room #XXX May 2, 2002	59.99
Breakfast May 3, 2002	12.99
Gratuity May 2, 2002 - 17%	12.40
Tax May 2, 2002	5.84
Total Due	\$207.44

Department Determination:

The amount of the gratuity is not taxable [RSA 78-A:6-a VI. (a) and (b)].

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Audit Division, 45 Chenell Drive, Concord, NH 03301 or (603) 271-3400.