

**New Hampshire Department of Revenue Administration
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**TECHNICAL INFORMATION RELEASE
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A Technical Information Release is designed to provide immediate information regarding tax laws administered by the Department or 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 (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.). Questions should be directed to Customer Service at (603) 271-2191.

Guidelines for Hotel Operators Using On-Line Booking Companies

The Department has received several inquiries from hotel operators in the state concerning the applicability of the Meals and Rentals (M&R) Tax, RSA 78-A, to room bookings made through on-line booking companies, such as, but not limited to, Orbitz, Expedia, Advanced Reservation Systems, Inc. (ARES), Hotels.com, etc.

On-line booking companies contract with hotels to purchase blocks of rooms at reduced rates. The booking companies, in turn, rent the rooms to end users, through on-line booking, at a mark-up over the reduced rate. This amount is usually considerably less than the going rate at the hotel.

The issues for New Hampshire licensed hotel operators are: "What is the role of the on-line booking company with respect to the collection and remittance of the tax?" and "To which room rate does the tax apply?"

"What is the role of the on-line booking company with respect to the collection and remittance of the tax?"

Regardless of the stated relationship between the parties, for the purposes of administering the M&R tax, the Department considers on-line booking companies as the agents of the hotel operators with whom they contract. Operators must be registered with the Department and each location where it operates must be licensed. RSA 78-A:4. On-line booking companies are not "operators" within the meaning of the M&R statute. See, RSA 78-A:3, IV. They do not have an independent responsibility to collect and remit M&R taxes to New Hampshire. However, neither are they end users or occupants. See, RSA 78-A:3, V. Their role is to market the operator's product to a broader target audience than the New Hampshire operators may be able to achieve on their own. The New Hampshire licensed operator is the person responsible for collecting and remitting the correct amount of M&R tax. See, RSA 78-A:7, I. It is the responsibility of operators to be sure that they remit the correct amount of tax for on-line bookings. As a practical matter, operators are advised to address this issue directly in their contracts with on-line booking companies to be sure that the operator is provided with an accounting of the amount the online booking company collects for the room.

“To which room rate does the tax apply?”

It is the Department's position that RSA 78-A requires the tax to be calculated on the room rate paid for the occupancy by the end user, regardless of the hotel's going rate for the room and regardless of the contract amount between the operator and the on-line booking company.

The M&R tax on hotel accommodations is a tax on the *occupancy* of a hotel room. RSA 78-A:6, I. *Occupancy* is defined as the use or possession, or the right to the use or possession, of any room in a hotel for any purpose. RSA 78-A:3, VI. An occupant is the person who, for *rent* paid, has the right to the use or possession of any room in a hotel. RSA 78-A:3, V. *Rent* is “the consideration received for occupancy valued in money, . . . or services . . . and any amount for which the *occupant* is liable for the *occupancy without any deduction of any kind*.” RSA 78-A:3, VII(s)(emphasis added). The economic burden of the tax falls on the end user, not the operator or its agent. See, RSA 78-A:7, I (“The operator shall demand and collect the tax from the occupant The occupant . . . shall pay the tax to the operator.”); *Cagan's, Inc. v. New Hampshire Dept. of Revenue Admin.*, 128 N.H. 180 (1986)(RSA 78-A:7 places the burden of the M&R tax on the customer).

Given this statutory structure and the applicable case law, the amount the occupant pays to the on-line booking company for the room is the amount subject to M&R tax.

For example: An on-line booking company purchases a block of rooms from a New Hampshire licensed hotel operator at a rate of \$82 per room. The company charges the end user \$100 for a room. The tax on the room would be 8% of \$100, or \$8. The tax is on the amount paid by the customer for the occupancy, not the amount paid by the agent. How that \$8 is collected is a matter of negotiation between the operator and the on-line billing company. The operator, however, is the party responsible to the state.

Recording the transaction.

The Department has received inquiries from smaller hotel operators concerned about how to reflect these transactions using off the shelf software programs. Transactions could be entered as follows, using the example numbers above:

When the online booking company pays the operator for the room, the operator could reflect the sale of \$100, tax payable to the State of \$8, a booking fee expense of \$18, and cash received of \$90. The net income on the rental of this room could be reflected as the sale of \$100 minus the \$18 fee, or \$82.

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 N.H. Department of Revenue Administration, 45 Chenell Drive, Concord, NH 03301 or by contacting them at (603) 271-2318.