

***DISCLAIMER TO THE OFFICIAL NOTICE BELOW REGARDING DI SUPPLY: Effective April 30, 2021. The current treatment of utilities as described in Kansas City Power & Light Co. v. Director of Revenue, 83 S.W.3d 548 (Mo. banc 2002) will be allowed for audit periods prior to this date. For periods subsequent to this date, purchases of utilities by hotels and similar establishments for use in guests' rooms are no longer exempt from sales tax per DI Supply I LLC, v. Director of Revenue 601 S.W.3d 195 (Mo. banc 2020).**

Hotels – Hammer to Hand - Top 5 Educational/Guidance Items

Section 144.020.1(6), RSMo, imposes a sales tax on the amount of sales or charges for “all rooms, meals, and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public.”

1. As a hotel, you may offer a number of amenities to your guests as part of their stay. We understand that these amenities are offered as a way to make the stay for the guests more enjoyable. This is great! However, we do understand that these amenities often come in the form of additional charges to the room stay. Depending on the nature of the charge, these charges may or may not be considered taxable for sales tax purposes. Items (a-f) below are some of the items that are classified as taxable amenities in a hotel setting. These items are considered a part of the total room charge per Section 144.020.1(6), RSMo, meaning they are charges that the customer must pay in order to have these amenities in the room. Items (g-j) below are charges that are not directly related to the hotel room rented but are typically offered at a hotel and taxable under separate statutes.
 - a. Smoking fees
 - b. Pet fees
 - c. Rollaway bed fees
 - d. Late checkout fees
 - e. Lockout fees
 - f. Sleeper fees (early departure)
 - g. Fax/copier fees
 - h. Meeting room/clubroom charges
 - i. Local/long-distance telephone charges
 - j. Athletic facility fees

2. Related to (1) above, there are a number of charges offered in a hotel but are treated as non-taxable services (or non-taxable under separate statutes) and thus not subject to sales tax in a hotel setting.
 - a. Cleaning charges
 - b. Covered parking fees
 - c. Dry cleaning fees
 - d. Laundry fees
 - e. Cancellation fees (ONLY if the cancellation fees are an administrative fee for cancelling the room, if the cancellation charge represents one night stay or a variation thereof, the charge should be taxable as the charge would be the equivalent of a “room rental.”
 - f. Damage or replacement fees

- g. Internet charges
 - h. Vending commissions (only non-taxable when the hotel receives a commission on vending machines owned by another individual/business)
 - i. Pay-per-view charges
3. Do you offer 30-day (or more) room rentals as part of your hotel operations? If so, this is a great way to offer a place to stay for those individuals that may need to take advantage of that living situation at an affordable rate. However, you should be aware of the tax implications of offering these types of stays. The Department has issued regulatory guidance on this issue, 12 CSR 10-110.220 (Hotels and Motels). This regulation defines a permanent resident and mentions the taxability of these types of stays. Specifically, these types of stays are treated as non-taxable for sales tax purposes due to meeting the requirement of a permanent residence. However, you should be aware of the following nuances to the tax treatment of these stays.
- a. This exemption is available to individuals ONLY, not to businesses. In order to demonstrate this treatment, payment information of the purchaser needs to be maintained of the stays to prove that an individual account (not a business account) was used to pay for the stays.
 - b. Records need to be maintained of the length of stay for permanent resident (hotel POS report, folios, reservation logs, etc.) stays as well as payments (checks, credit card receipts, for example) made by these individuals. If these types of stays are claimed as adjustments on sales tax returns, the payments for these stays need to directly tie to those adjustments claimed on sales tax returns. This will allow an auditor to verify the adjustments claimed on sales tax returns for these types of stays.
 - c. Although the above-referenced regulation indicates these stays need to be contracted “in advance” of the stay, these types of stays would typically be allowed as being exempt from sales tax in audit setting if the records substantiate that the amounts received by your business were from a permanent resident (described in “b” above).
4. We understand that a number of small and large items are purchased for use in a hotel room. We also understand that some of these items are reusable across a number of guests, and that some items are non-reusable and consumed by a customer in one stay. Below is the tax treatment of these types of items for sales and use tax purposes:
- a. Reusable items - this would include chairs, furniture, curtains, linens, towels, pillows, mirrors, radios, televisions, desks, lamps, other furnishings, etc. If purchased out-of-state, tax should either be charged on the invoice or accrued and reported on a consumer’s use tax return. If purchased in-state, tax should be charged on the purchase invoice.
 - b. Non-reusable items – this would include soap, shampoo, tissue, food and/or confectionary items offered to the guests free of charge and furnished to the guests as part of the room charge. As these items are considered a part of the room charge and are not taxable on the purchase, they may be purchased for resale. This extends to items purchased for complimentary meals and drinks provided to hotel guests (i.e. free champagne, complimentary breakfast) This treatment is in reference to Section 144.011.1(11), which states: “The purchase by persons operating hotels, motels or other

transient accommodation establishments, of items of a nonreusable nature which are furnished to the guests in the guests' rooms of such establishments and such items are included in the charge made for such accommodations. Such items shall include, but not be limited to, soap, shampoo, tissue and other toiletries and food or confectionery items offered to the guests without charge;”

5. Do you use third-party booking sites such as Travelocity or Hotels.com? If so, this can be a great way to reach additional customers who may not be aware of your hotel. However, did you know that the transaction between your hotel and the online hotel booking company are still taxable to you as the hotel? Per Section 144.018.3, RSMo, the taxable service of providing rooms to the public cannot be purchased for “resale.” Therefore, you are still the “seller” of the room for purposes of collecting sales tax from customers and sales of hotel rooms from these types of booking sites are still taxable as gross receipts on Missouri sales tax returns.

OFFICIAL NOTICE – PURCHASES OF UTILITIES BY HOTELS – CHANGE IN TAX TREATMENT

Separate from (1) through (5), which are educational items, there is one item for which this document serves as official notice of a change in tax treatment on the usage of utilities for resale purposes in a hotel. This change is a result of *DI Supply I LLC, v. Director of Revenue* 601 S.W.3d 195 (Mo. banc 2020), which was handed down by the Missouri Supreme Court on March 17, 2020. Previously, in *Kansas City Power & Light Co. v. Director of Revenue*, 83 S.W.3d 548 (Mo. banc 2002), the Missouri Supreme Court held that the transfer of the use of utilities to the customer renting the room allowed hotels to purchase the utilities consumed in the rooms under a claim of resale. This distinguishes and clarifies that hotels’ purchases of utilities used in common areas are taxable and have always been taxable. In other words, the understanding was that customers controlled the use of the utilities and consumed it by using it up during their stay. The transfer of the use of utilities thus qualified the original purchase by the hotel as exempt from tax. Hotels have been operating under this understanding for a number of years. However, the Supreme Court in *DI Supply I* rejected this treatment. The transfer of the use of utilities by the hotel to the guest does not allow the hotel to purchase utilities exempt from sales tax under a claim of resale for providing their taxable service of renting rooms to the public.

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