



**VERNON BARNETT**  
Commissioner

# State of Alabama Department of Revenue

(www.revenue.alabama.gov)  
50 North Ripley Street  
Montgomery, Alabama 36132

**JOE W. GARRETT, JR.**  
Deputy Commissioner

**CURTIS E. STEWART**  
Deputy Commissioner

**BRENDA R. COONE**  
Deputy Commissioner

**MICHAEL D. GAMBLE**  
Deputy Commissioner

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## Alabama Department of Revenue NOTICE

### Tax Guidance for Persons, Firms, and Corporations Subject to Transient Occupancy (Lodgings) Tax

The Alabama Department of Revenue held a public hearing on August 10, 2017, to amend the Sales and Use Tax Rule 810-6-5-.13 entitled "Persons, Firms, and Corporations Subject to Lodgings Tax" to clarify the tax treatment for the rental of certain rooms that are neither intended nor suitable and not used for overnight sleeping purposes. This change is effective for all open tax periods for those transactions on which the lodgings tax was not collected. No refunds will be made for any tax on which a final assessment was entered and/or tax was collected prior to the effective date of this rule. A copy of the entire rule is attached. The amended section is worded as follows:

(8) Charges made for the rental of ball rooms, dining rooms, club rooms, sample rooms, conference rooms, wedding chapels, or other meeting spaces that are neither intended nor suitable and not used for overnight sleeping purposes are not subject to the tax levied by Section 40-26-1, Code of Alabama 1975, if the charges for the rental are separately stated by the facility and are used exclusively as a meeting room for any conference, seminar, club meeting, private party or similar type activity. This exclusion, as provided for in this rule, applies solely to the transient occupancy tax levied under Chapter 26 of Title 40, Code of Alabama 1975, and does not apply to any other taxes, licenses, or fees. However, the separately stated rental charges made exclusively for such meeting rooms by the facility are also excluded from the tax levied by Chapter 23 of Title 40.

Attached is a copy of Sales and Use Tax Rule 810-6-5-.13, entitled *Persons, Firms, and Corporations Subject to Lodgings Tax*. You may also view the rule on the Department's website under the LEGAL link and then utilize the Administrative Rules icon.

The changes made to the rule will be effective September 28, 2017.

810-6-5-.13. **Persons, Firms, and Corporations Subject to Lodgings Tax.**

(1) The term "lodgings tax" as used in this rule shall mean the state tax levied in Section 40-26-1(a), Code of Alabama 1975, and county and municipal taxes which parallel the state tax levy.

(2) The definition of the term "person" as used in this rule shall be the same as the definition contained in Section 40-2A-3(13), Code of Alabama 1975.

(3) The term "transient" as used in this rule means any person to whom rooms, lodgings, or other accommodations are provided for a period of less than 180 continuous days.

(4) Except as noted, lodgings tax applies to all charges made for the use of rooms, lodgings, or other accommodations, including charges for personal property used or services furnished in the rooms, lodgings, or other accommodations, by every person who is engaged in the business of renting rooms or lodgings or furnishing accommodations to transients. The tax applies regardless of whether the person occupying such rooms or lodgings or receiving such accommodations is a resident or nonresident of the area in which such rooms or lodgings are located or in which such accommodations are furnished.

(5) The lodgings tax shall be collected by all persons engaged in the business of renting or furnishing rooms or other accommodations in any hotel, motel, rooming house, apartment house, lodge, inn, tourist cabin, tourist court, tourist home, camp, trailer court, marina, convention center, or any other place where rooms, apartments, cabins, sleeping accommodations, mobile home accommodations, recreational trailer parking accommodations, boat docking accommodations, or other accommodations are made available to travelers, tourists, or other transients.

(6) Where a separate charge is made for personal property furnished in rooms or other lodgings in addition to the charge for the use of the rooms or other lodgings, such separate and additional charge is subject to the lodgings tax.

(7) Where a separate charge is made for maid, porter or janitorial services furnished in rooms or other lodgings in addition to the charge for the use of the rooms or lodgings, such separate and additional charge is subject to the lodgings tax. Charges for laundry, dry cleaning, and telephone services are not subject to the tax.

(8) Charges made for the rental of ball rooms, dining rooms, club rooms, sample rooms, conference rooms, wedding chapels, or other meeting spaces that are neither intended nor suitable and not used for overnight sleeping purposes are not subject to the tax levied by Section 40-26-1, Code of Alabama 1975, if the charges for the rental are separately stated by the facility and are used exclusively as a meeting room for any conference, seminar, club meeting, private party or similar type activity. This exclusion, as provided for in this rule, applies solely to the transient occupancy tax levied under Chapter 26 of Title 40, Code of Alabama 1975, and does not apply to any other taxes, licenses, or fees. However, the separately stated rental charges made exclusively for such meeting rooms by the facility are also excluded from the tax levied by Chapter 23 of Title 40.

(9) The state of Alabama, counties and incorporated municipalities of the state, and

educational institutions and agencies of the state and the counties or incorporated municipalities of the state are not exempt from lodgings tax. Accordingly, charges for rooms, lodgings, or other accommodations furnished to these entities are taxable whether billed directly to, and paid for directly by, the entity or paid by employees of these entities with their own funds. (AGO, Graddick, June 4, 1981) (Section 40-26-1)

(10) Other states, counties and incorporated municipalities of other states, and educational institutions and agencies of other states and counties and incorporated municipalities of other states are not exempt from lodgings tax. Accordingly, charges for rooms, lodgings, or other accommodations furnished to these entities are taxable whether billed directly to, and paid for directly by, the entity or paid by employees of these entities with their own funds. (Section 40-26-1)

(11) Exemptions from the lodgings tax are as follows:

(a) Charges for rooms, lodgings, or accommodations supplied for a period of 180 continuous days or more in any one place are exempt from state, county, and municipal lodgings tax. Prior to December 1, 2001, the tax did not apply to charges for rooms, lodgings, or accommodations supplied for a period of 30 continuous days or more in any one place.

(b) Effective January 1, 2009, charges for rooms, lodgings or accommodations made in connection with a state-certified production which meets the requirements of Section 41-7A-45, Code of Alabama 1975, as amended, shall be exempt from the state lodgings tax. When the qualified production company makes application for and receives written certification of the incentive award from the Alabama Film Office, the Department will issue the appropriate certificate of exemption. The lodgings tax exemption provided in Section 41-7A-45 applies only to state lodgings tax. The qualified production company must pay applicable local lodgings taxes. See Lodgings Tax Rule 810-16-1-.01 State Sales, Use, and Lodgings Tax Exemption for Qualified Production Companies.

(c) Charges for rooms, lodgings, or other accommodations furnished to the United States government, its departments, or its agencies are exempt from state, county, and municipal lodgings tax provided the charges are billed directly to the United States government and paid for by the United States government with government funds. The charges are exempt from lodgings tax when paid by credit card provided charges to the card are billed directly to, and paid directly by, the U.S. Government and are not billed to and paid by an employee who is reimbursed by the U.S. government. Charges for rooms, lodgings, or other accommodations furnished to federal employees in conjunction with their official duties are taxable when the federal employee pays the charges with his or her own funds or with a credit card and receives reimbursement from the United States government.

(d) Federal credit unions are exempt from state, county, and municipal lodgings tax. (12 U.S.C.A. '1768) This exemption applies to charges for rooms, lodgings, or other accommodations furnished to federal credit unions provided the charges are billed directly to the federal credit union and paid for by the federal credit union with the credit unions funds. The charges are exempt from lodgings tax when paid by credit card provided charges to the card are billed directly to, and paid directly by, the federal credit union and are not billed to and paid by an employee who is reimbursed by the federal credit union. Charges for rooms, lodgings, or other accommodations furnished to federal credit union employees in conjunction with their

official duties are taxable when the credit union employee pays the charges with his or her own funds or with a credit card and receives reimbursement from the federal credit union.

(e) Certain foreign diplomats and consular officials are exempt from state, county, and municipal lodgings taxes pursuant to treaties and other diplomatic agreements with the United States. (U.S. Constitution, Article VI) See Sales, Use, and Lodgings Tax Rule 810-6-3-.24.01 entitled Foreign Diplomatic and Consular Officials.

(f) The proceeds from the sale or resale of any vacation time-sharing lease plan are exempt from lodgings tax. (Section 34-27-65, Code of Alabama 1975)

(g) Charges for rooms, lodgings, or other accommodations furnished to entities that are exempt from the payment of any and all state, county, and municipal taxes by special act of the Legislature including, but not limited to, those entities enumerated in Section 40-9-12 are exempt from lodgings tax provided the charges are billed directly to the exempt entity and paid for by the exempt entity with the exempt entity's funds. The charges are exempt from lodgings tax when paid by credit card provided charges to the card are billed directly to, and paid directly by, the exempt entity and are not billed to and paid by an employee who is reimbursed by the exempt entity. Charges for rooms, lodgings, or other accommodations furnished to employees of the exempt entity in conjunction with their official duties are taxable when the employee pays the charges with his or her own funds or with a credit card and receives reimbursement from the exempt entity.

(h) Charges for certain rooms, lodgings, or accommodations supplied by camps, conference centers, or similar facilities are exempt from lodgings tax. See Lodgings Tax Rule 810-6-5-.21 entitled Lodgings and Programs Provided for Children, Students, or Members or Guests of Nonprofit Organizations by Camps, Conference Centers, and Similar Facilities.

(12) The lodgings tax does not apply to sales of tangible personal property which are subject to the Alabama sales tax. All of the supplies, furniture and fixtures used or consumed in operating such establishments as referenced in paragraph (4) are subject to the sales or use tax, whichever may apply, at the time of purchase for such use or consumption, including beds, bedding, carpets, shades, curtains, linens, uniforms, bathroom supplies, janitor supplies, fuel for heating and cooking, air conditioning equipment, etc.

(13) The lodgings tax shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every person, firm, or corporation on whom the lodgings tax is levied shall prepare and forward to the Department, within the time fixed and prescribed by law, a lodgings tax return for each calendar month using the Alabama Paperless Filing and Payment System as mandated by the Department and shall pay to the Department the amount of tax shown to be due. See Lodgings Tax Rule 810-6-5-.22 entitled Lodgings Tax Returns.

**Authors:** Debbie Lee, Ginger L. Buchanan, and Rouen Reynolds  
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