



Room Occupancy Excise
DOR Directive 99-2

Massachusetts
Department of
Revenue

GOVERNMENT DOCUMENTS

COLLECTION

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Complimentary Rooms

DD 99-2 modifies and replaces DD 88-1.

Issue:

Under certain circumstances, further delineated in the examples given below, a hotel, motel or lodging house [hotel] may permit some of its rooms to be occupied on a complimentary basis.

Are rooms provided on a complimentary basis by a hotel subject to the room occupancy excise?

Discussion:

Under G.L. c. 64G, § 3, the room occupancy excise must be paid whenever:

- (1) the operator of a hotel
- (2) transfers a room or rooms to an occupant
- (3) for a "rent" \$15.00 or greater. "Rent" is defined as: "the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever." G.L. c. 64G, § 1(h).

Thus, the room occupancy excise must be collected by any operator of a hotel, motel or lodging house whenever he or she receives sufficient consideration in any form for the right to occupy a complimentary room.

Examples:

The following examples illustrate this principle:

I. Travel Agents, Familiarization Tours, Tour Guides

Example 1:

A hotel furnishes a complimentary room to a travel agent, with no commitment by the travel agent to promote the hotel. The occupancy is a marketing effort based on the prospect of generating goodwill, but the hotel receives no present benefit. No excise is imposed.

Example 2:

A hotel furnishes a complimentary room to a travel agent, with a promise by the travel agent to promote the hotel. The hotel is receiving advertising services as a direct result of offering the room, which is consideration. The excise is imposed.

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Example 3:

A hotel offers complimentary rooms to visitors on "familiarization trips." Those visitors are deciding whether Massachusetts is an appropriate venue for future business. There is no commitment by the visitors (or those who initially request that the rooms be made available) to bring future business. The hotel receives no present consideration, and the excise is not imposed.

Example 4:

A hotel furnishes a complimentary room to the tour guide traveling with a group booked at the hotel. The only benefit realized by the hotel is the rent received from the paying group members. No additional excise is imposed.

II. Rooms Donated to Be Used for Charitable Purposes

Example 5:

A hotel donates a room to an organization that will sell or auction the room and use all of the proceeds from the sale for charitable purposes, or will otherwise use the room for charitable purposes. The hotel receives no benefit from the organization or the occupant of the room for the transfer. No excise is imposed.

III. Guests

Example 6:

The organizers of a convention rent multiple rooms and are given an additional complimentary room. The only benefit realized by the hotel is the rentals received from the paying group members. No additional excise is imposed.

Example 7:

A hotel gives a complimentary room for a night for multiple nights stayed as part of a "frequent traveler" program. The hotel receives no rent beyond that already paid for occupancy during the previous stays. There is no additional excise imposed.

Example 8:

A guest complains that accommodations at a hotel are unsatisfactory and is not charged for a night's stay. The hotel receives nothing from the guest; no excise is imposed.

IV. Employees

Example 9:

A hotel permits employees of an affiliated corporation to stay free of charge at its facilities on a "space available" basis while they are on business for the affiliate; employees of the hotel while on business may fly free of charge on an airline owned by the affiliate. Since the hotel will avoid incurring costs it would ordinarily incur for employee travel, complimentary lodgings at the hotel are given in consideration for services from the affiliate. The excise is imposed.

Example 10:

A hotel permits employees of an affiliated corporation to stay free of charge at its facilities on a "space available" basis while they are on vacation or for other leisure activities; employees of the hotel may stay free at hotel facilities of the affiliate on the same basis. Because the hotel would otherwise incur costs to provide the benefit, avoidance of these costs is consideration for provision of the complimentary lodgings. The excise is imposed.

Example 11:

A hotel permits its employees to use a room free of charge on a "space available" basis. This fringe benefit is additional compensation given in consideration of the employee's services. Since the hotel receives consideration, in the form of cost avoidance, the excise is imposed. In this circumstance the employee is not actively engaged in furthering the hotel's business interests, and is not acting as agent for the hotel.

Example 12:

An employee of the hotel must remain overnight there because of his duties and is provided with a room. The employee receives a room for the convenience of the employer and the employer is making use of its own facilities through its agent, the employee. In this situation, the employee and the operator of the hotel form a single unit for purposes of the room occupancy excise, and the hotel is both the "operator" and the "occupant" of the room. There is no transfer of occupancy. Accordingly, the room occupancy excise does not apply.

V. Construction Workers

Example 13:

A hotel provides free rooms to a construction crew or other service providers during hotel renovations. The cost of this lodging would ordinarily be borne by the contractor or service provider and passed on to the hotel in the form of a higher price for renovations. The lower price paid by the hotel to the contractor or service provider reflects the consideration received for the complimentary rooms. The excise is therefore imposed.

Example 14:

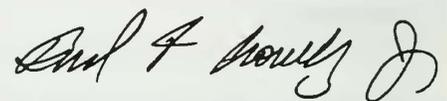
A partially completed hotel project lodges construction workers or other service providers free of charge in useable parts of the building under construction. Although consideration may be present in the form of a lower construction cost, the building is not yet a hotel, motel, or lodging house, registered or required to be registered. Consequently, the room occupancy excise does not apply.

Directive:

In the situations outlined above, the room occupancy excise is collected if: (1) the place in which the complimentary room is located is a hotel; (2) there is a transfer of occupancy; and (3) there is consideration for the transfer valued at \$15.00 or more. All three of the elements listed above must be present before a complimentary room may be taxed. The excise is based on the fair market value of the room received.

Reference:

G.L. c. 64G, §§ 1(h), 3.



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Acting Commissioner of Revenue
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