

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Uniform State and Local Sales Tax Definitions (LAC 61:I.4301)

The Department of Revenue, Office of the Secretary, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) accordingly amends and adopts LAC 61:I.4301(C) *Hotel*, to determine sales tax imposition on the taxable service of furnishing the accommodations of sleeping rooms, cottages or cabins. The Emergency Rule shall be effective February 1, 2006, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final rule, whichever comes first.

The Department of Revenue, Office of the Secretary, hereby finds that imminent peril to the public welfare exists, and an Emergency Rule is necessary to ensure proper and immediate collection of taxes under R.S. 47:301(14) due to the State of Louisiana and local taxing jurisdictions at a time when state and local collections have been devastated by catastrophic events. The Emergency Rule is promulgated in the best interest of the State, local governments, and the citizens of the State of Louisiana. The purpose of the Emergency Rule is to provide direction and guidance to the hotel industry, travelers, and citizens for proper application of law, and to enable proper collection as required by law.

The Emergency Rule will apply to all state and local sales and use tax imposed by the State of Louisiana and the Louisiana Tourism Promotion District pursuant to R.S. 47:301 *et seq.* The authority for local taxing jurisdictions to collect special occupancy taxes where authorized is not affected by this Emergency Rule.

Title 61 REVENUE AND TAXATION Part I. Taxes Collected and Administered By the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4301. Uniform State and Local Sales Tax Definitions

A. ...

B. Words, terms and phrases defined in R.S. 47:301(1) through R.S. 47:301(27), inclusive, have the meaning ascribed to them therein and as further provided in §4301.C.

C. ...

Hotel—

a. The term *hotel* has been defined under R.S. 47:301(6) to be somewhat more restrictive than normally construed relative to the size of the establishment. Those establishments engaged in the business of furnishing sleeping rooms, cottages or cabins to transient guests that consist of six such accommodations at a single business location meet the statutory definition. If an establishment has fewer than six sleeping rooms, cottages or cabins at a single business location for transient guests, the establishment is not a *hotel* for purposes of *state* and *local sales or use tax*. The statutory definition of *hotel* excludes facilities with fewer than the specified number of accommodations from collection of *state* and *local sales or use tax*.

b. (i) In determining whether an establishment furnishes hotel services to transient guests, it is determined that a guest who transacts for the services of a hotel, regardless of the length of time that the hotel services are used, is considered a transient guest and the transaction is subject to sales tax. Where a hotel provides permanent residences to permanent occupants, the transaction is not subject to *state* and *local sales or use tax*. For the transaction to be considered a rental as a permanent residence to permanent occupants, the physical properties of the space must provide the basic elements of a home, including full-sized and integrated kitchen appliances and facilities. Additionally, the occupant must use the facilities of the hotel as a home with the intent to permanently remain. When all conditions of the above two standards are met, the occupant may be considered non-transient for the purposes of the *state* and *local sales or use tax*. A lease with a hotel for a period of not less than one year will be considered as evidence in support of permanent residency status, when the area rented contained the required physical properties of the hotel accommodations at the beginning of the lease. Proof that hotel rental contained the requisite physical properties of the hotel accommodations within a unit continuously rented by one person or family for a period greater than one year will be considered as evidence in support of permanent residency status. The Department may require additional evidentiary support of claims of non-transient status.

(ii) For the purposes of *state and local sales and use tax* collections under R.S. 47:301 *et seq.* a guest of a hotel is a natural person.

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AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:2554, 2556 (December 2002), LR 29:186 (February 2003), LR 30:1306 (June 2004), LR 30:2870 (December 2004), LR 32:____(____2006).

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