



SALES TAX ON HOMEOWNERS ASSOCIATION FEES AND LODGING RENTALS

The West Virginia State Tax Department has received many questions about the sales and use tax considerations associated with the rental of private houses, condominiums, or apartments and the rental of sleeping rooms at bed and breakfast inns, tourist homes, rooming houses, or other types of lodging. This publication answers many of these questions. However, it is not a substitute for tax laws or regulations.

Persons who lease or rent real estate or provide lodging to others are considered to be engaging in business in this State. Persons engaged in these activities are required to register with the State Tax Department and obtain a business registration certificate. Persons are not required to obtain a business registration certificate if they meet **all** three of the following: (a) they do not gross more than \$4,000 per year; (b) they are not required to collect or withhold a tax; and (c) they do not claim an exemption from Consumers Sales and Service Tax. Registration is accomplished by completing the **"Application For Registration Certificate"** (Form WV/BRT-BUS). If you engage in these activities or in any other business activities, you must register whether you are an individual, partnership, corporation or other business entity. Failure to register is a serious matter. It may subject the owner of the business to fines or criminal penalties.

Generally, the sales tax is not imposed on the sale, long-term lease or rental of realty (houses, apartments, offices or other buildings). The lease or rental of real property is considered to be "long term" if the lodging is provided to the same person or occupants for thirty (30) or more consecutive days.

The lease or rental of temporary lodging is subject to the sales tax. "Temporary" lodging is for a period of less than thirty (30) days.

Homeowners Association Fees

In instances where individuals are billed a monthly maintenance fee by a homeowners association to pay for taxable services provided by the association such as security, road maintenance, pest control, fire protection, and housekeeping, consumers sales and service tax must be charged on the monthly fee at the time of billing. If charges for both taxable and nontaxable services are included in the maintenance fee, then a breakdown of the amounts attributable to taxable and nontaxable services must be maintained by the association. Failure to do so will result in the entire maintenance fee being treated as taxable upon audit.

The association may issue an exemption certificate to any third party provider of these services and assert a purchase for resale exemption.

The imposition of the consumers sales and service tax depends on whether the activity performed by the provider is a taxable service. Below are examples of taxable and nontaxable service commonly provided by homeowners associations or similar organizations:

TAXABLE

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| Road Maintenance | Pest Control |
| Parking Lot Maintenance | Housekeeping |
| Snow Removal | Television Cable Charges (for internal distribution) |
| Security | Telephone Lines (for internal distribution) |
| Fire Protection | |

NONTAXABLE

- Bona-fide Association Dues
- Trash & Refuse Collection (if provided by a PSC regulated company)
- Water & Sewer (if provided by a PSC regulated company)

Bona-Fide Dues

"Bona-Fide Dues" are defined in 110 C.S.R. § 2.48 to mean those amounts paid by members which entitle such persons to continued membership in a corporation, organization or association. "Bona-Fide Dues" do not include any amounts paid for tangible personal property or specific services rendered to members by a corporation, organization or association and are therefore not subject to consumers sales and service tax.

Providing Lodging For A Fee Is Subject To Sales Tax

The following is a non-inclusive list of businesses that must collect the sales tax from their customers when they provide lodging, or sales of tangible personal property, or furnish services or amusements:

- Bed and Breakfast Inns
- Boarding Houses
- Cabin Rentals

Camp Grounds
College Dormitories, Fraternity and Sorority Houses - that provide lodging to the public (but no tax is due on charges for room and board to students enrolled at the college or university).
Condominium Rentals
Hostels
Hotels
Inns
Lodges
Motels
Private Clubs
Resorts
Sleeping Rooms (both public and private)
State Parks
Tourist Homes
YMCA-YWCA

This list is not all inclusive. Other persons who provide lodging are required to collect the tax.

The total amount of tax collected must be remitted to the State Tax Department; and failure to collect tax will result in the vendor being liable for the amount of tax which he failed to collect.

Purchases By Persons Who Provide Lodging

Generally, persons who provide lodging are required to pay the consumers sales or use tax on all purchases for use in their business. However, purchases of complimentary items given to guests are not subject to the tax. *(See Example below.)*

Example:

Bob and Mary Jones own a condominium near a West Virginia ski resort. During the tourist season, they regularly rent the condominium by the day, weekend or week to skiers. Although the Jones' may not consider themselves to be engaged in business, they must register with the Department and obtain a business registration certificate unless they meet the criteria for exemption. They must also collect sales tax on the charges they collected from customers for lodging or for sales of other taxable services or tangible personal property.

Bob and Mary Jones must pay sales or use tax on all of their purchases of tangible personal property or taxable services for use or consumption in the conduct of this business. This includes, but is not limited to, paying sales or use tax on: real estate management fees; furniture purchased to furnish rooms; linens; cleaning services; and repair and maintenance services purchased to maintain the real property. However, purchases of complimentary items such as shampoos, bath soaps, coffee and newspapers which are given to guests are not subject to the consumers sales or use tax.

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