

**RULES
OF
DEPARTMENT OF REVENUE**

**CHAPTER 560-13
FEES AND EXCISE TAXES**

**SUBJECT 560-13-2
STATE HOTEL-MOTEL FEE**

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- (1) **Purpose.** This Rule addresses the state hotel-motel fee imposed pursuant to O.C.G.A. §§ 48-13-50.2, 48-13-50.3, and 48-13-50.4.
- (2) **Definitions.** For purposes of this Rule only:
- (a) “Accommodation” means the “retail sale”, as defined under O.C.G.A. § 48-8-2(31), of any room or lodging that is furnished for value to the public and provides physical shelter.
 - (b) “Extended Stay Rental” means an Accommodation for longer than 30 consecutive days to the same customer;
 - (c) “Franchisee” means a franchisee as defined in 16 C.F.R. 436.1.
 - (d) “Franchisor” means a franchisor as defined in 16 C.F.R. 436.1.
 - (e) “Innkeeper” means:
 - 1. Any person that furnishes Accommodations in a county or municipality and that is licensed by, or required to pay business or occupation taxes to, such municipality or county for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place where Accommodations are regularly furnished for value; or
 - 2. a Marketplace Innkeeper.
 - (f) “Marketplace Innkeeper” means a person, except for certain franchisors as set forth in paragraph (6)(h),
 - 1. who contracts with a Marketplace Seller, in exchange for any form of consideration, to make available or facilitate on behalf of the Marketplace Seller the rental or lease of any Accommodation by (directly or through any agreement or arrangement with another person):

- (i) collecting, charging, processing, or otherwise similarly facilitating payment of such rental or lease on behalf of the Marketplace Seller; and
 - (ii) providing a service that makes available or facilitates such rental or lease in any manner. Such service may include, but is not limited to, promoting, marketing, advertising, taking orders or reservations for such rental or lease; providing the physical or electronic infrastructure that brings purchasers and Marketplace Sellers together for such rental or lease; or otherwise similarly assisting the Marketplace Seller in making such rental or lease, or transmitting or otherwise similarly communicating the offer and acceptance between the Marketplace Seller and the purchaser for such rental or lease, or otherwise similarly assisting the Marketplace Seller for such rental or lease. Such service excludes merely processing the payments for such rental or lease;
- and
- 2. who facilitates, in the manner described in paragraph (2)(f)1. above, retail sales (including rentals and leases of Accommodations) that are subject to Georgia sales and use tax, if the total value such facilitated sales, combined with the facilitator's own retail sales that are subject to Georgia sales and use tax, equals or exceeds \$100,000.00 in aggregate in the previous or current calendar year.
- (g) "Marketplace Seller" means a person that conducts a retail sale through or facilitated by any physical or electronic marketplace or platform operated directly or indirectly by a Marketplace Innkeeper or marketplace facilitator as defined in O.C.G.A. 48-8-2(18.1), regardless of whether such Marketplace Seller is required to be registered with the Department pursuant to Code Section 48-8-59.
- (3) **Imposition.** In addition to taxes of every kind imposed by law, Innkeepers must charge a state hotel-motel fee of \$5.00 per night tax imposed on the rental or lease by an Innkeeper of any Accommodation, unless the rental or lease is exempted or excluded under paragraph (6) or is an "Extended Stay Rental" under paragraph (7).
- (4) **Liability of Innkeepers, Customers, Marketplace Sellers, Marketplace Innkeepers, and Third Parties.**
 - (a) The state hotel-motel fee is a debt from the customer to the Innkeeper until it is paid and is recoverable at law in the same manner as authorized for the recovery of other debts. Any Innkeeper who neglects, fails, or refuses to collect the state hotel-motel fee is liable for the fee. The rental or lease of an Accommodation is subject to the state hotel-motel fee only if it is provided by an Innkeeper. However, a Marketplace Innkeeper is an Innkeeper and must remit the fee, even if

the owner on whose behalf the Marketplace Innkeeper facilitates the sale is not an Innkeeper.

1. Example 1: Owner advertises her house as a guest rental Accommodation on a website operated by the local newspaper. Neither the county nor the city in which Owner's house is located requires Owner to be licensed or pay business or occupation taxes for furnishing an Accommodation. Accordingly, Owner is not an Innkeeper and is not required to remit the state hotel-motel fee on the rental of her house. However, Owner is required to remit sales and use tax on the sales price of the guest's stay.
2. Example 2: Assume the same facts as in Example 1, except, instead of advertising her house on the local newspaper's website, Owner lists her house on MPI.com's website. MPI.com facilitates, on behalf of property owners, the rental of the owners' houses as guest Accommodations by advertising the owners' houses on its website and collecting the rental charges from guests on behalf of the owners. MPI.com receives a fee for each sale that it facilitates on behalf of the owners. The total value of the facilitated rentals of Accommodations that are subject to Georgia sales and use tax, combined with MPI.com's own retail sales that are subject to Georgia sales and use tax, equals or exceeds \$100,000.00 in aggregate in the previous or current calendar year.

MPI.com rents Owner's house to a guest and collects all the charges from the guest. Although Owner is not an Innkeeper, MPI.com must collect the state hotel-motel fee on each night of the guest's stay because MPI.com is Marketplace Innkeeper. MPI.com must also remit sales and use tax on the sales price of the guest's stay because it facilitated the rental of Owner's house as a marketplace facilitator as defined in O.C.G.A. 48-8-2(18.1) and a dealer as defined in O.C.G.A. § 48-8-2(8)(M.3).

3. Example 3: Assume the same facts as in Example 1, except the county in which Owner's house is located requires Owner to pay occupation taxes for furnishing an Accommodation. Owner must remit state hotel-motel fees for each night of the guest's stay because she is an Innkeeper. Owner must also remit sales and use tax on the sales price of the guest's stay.
- (b) The state hotel-motel fee is imposed on rental charges collected by a Marketplace Innkeeper for rentals or leases of any Accommodation that is facilitated by a Marketplace Innkeeper on behalf of a Marketplace Seller. The Marketplace Innkeeper is liable for the greater of:
1. the full amount of applicable state hotel-motel fees imposed on all rentals or leases of Accommodations that it facilitates within or outside Georgia on behalf of a Marketplace Seller; or

2. the amount of state hotel-motel fees collected by such Marketplace Innkeeper from all purchasers on all such rentals or leases.
 - (c) A Marketplace Seller is not required to collect or remit, and is not liable for, state hotel-motel fees imposed on sales of Accommodations for which a Marketplace Innkeeper is required to collect and remit state hotel-motel fees on behalf of the provider.
 - (d) A Marketplace Innkeeper is not liable for state hotel-motel fees that it fails to collect and remit to the extent that:
 1. the Marketplace Innkeeper demonstrates to the satisfaction of the Department that the error was due to insufficient or incorrect information given to the Marketplace Innkeeper by the Marketplace Seller on whose behalf the rental or lease of the Accommodation was facilitated;
 2. the Marketplace Innkeeper made a reasonable effort to obtain correct and sufficient information from such Marketplace Seller; and
 3. the Marketplace Seller and the Marketplace Innkeeper are not related members as defined in O.C.G.A. §48-7-28.3.
 - (e) When a Marketplace Innkeeper is relieved of liability as described in paragraph (4)(d) above, the Marketplace Seller on whose behalf the rental or lease of the Accommodation was facilitated is solely liable for the uncollected state hotel-motel fee, even if such Marketplace Seller is not an Innkeeper.
 - (f) Third parties making reservations on behalf of customers must remit all state hotel-motel fees collected by the third parties. If a third party, other than a Marketplace Innkeeper, has contracted with an Innkeeper to collect taxes and/or fees from customers, the Department may assess and collect state hotel-motel fees from either the Innkeeper or the third party.
- (5) **Sales and use tax base.** If the state hotel-motel fee is separately itemized on the invoice, bill of sale, or similar document given to the customer, it is excluded from the sales price for purposes of calculating sales and use tax.
- (a) Example: The price to rent a hotel room for one night is \$100.00. The bill shows \$100 for one night's stay and a separate line-item of \$5.00 for the state hotel-motel fee. The state and local sales tax rate in the county where the hotel is located is 7%. The sales tax is, therefore, \$7.00 (7% of \$100.00).
- (6) **Exemptions and exclusions.**
- (a) Except as otherwise provided in this Rule, exemptions under O.C.G.A. §§ 48-8-3 and 48-13-51(h) do not apply to the state hotel-motel fee.
 - (b) Federal government immunity. The state hotel-motel fee does not apply to Accommodations rented by the federal government by a check drawn on a federal

government account, by a credit card centrally billed to the federal government, or by a federal government purchase order.

- (c) Foreign diplomats. Foreign diplomatic missions, their members, and dependents and Taipei Economic and Cultural Representative Office (TECRO), Taipei Economic and Cultural Offices (TECOs), their employees and dependents are exempt from the state hotel-motel fee to the same extent they are exempt from sales and use tax.
- (d) Student housing. A facility providing housing to students pursuant to a contract with a school is not subject to the state hotel-motel fee, so long as the facility does not provide housekeeping, linen, or other customary hotel services.
- (e) Special care facilities. A facility that is registered with or licensed by a Georgia state governmental agency, whether publicly or privately owned and operated, which accepts persons who require special care on account of age, illness, or mental or physical incapacity, and which provides this special care by nurses, orderlies, or aides, is not an Accommodation. Accordingly, the units in this type of facility are not subject to the state hotel-motel fee. Examples of these types of facilities are nursing homes, rest homes, convalescent homes, maternity homes, homes for persons with disabilities, residence homes for adults, assisted living facilities, and similar facilities.
- (f) Accommodations used by the Innkeeper. Accommodations used by the Innkeeper in the regular course of business, for which no consideration is received, are not subject to the state hotel-motel fee. Examples include, but are not limited to, Accommodations provided to:
 - 1. Quality assurance inspectors;
 - 2. A weekend manager on duty;
 - 3. A food and beverage team assisting with in-house events.
- (g) Complimentary Accommodations. Complimentary Accommodations for which no rent or other consideration is paid are not subject to the state hotel-motel fee. The following Accommodations are not complimentary and are, therefore, subject to the state hotel-motel fee:
 - 1. Accommodations provided to employees of an Innkeeper at no charge if the Accommodations must be included in the employee's wages for purposes of federal income tax;
 - 2. Accommodations bartered as payment to vendors such as musicians and photographers;
 - 3. Accommodations purchased by redeeming reward points when the hotel receives consideration from a fund or other third party; and

4. Additional nights provided to guests who purchase a specified number of nights.
 - (i) Example: A hotel advertises, “Buy 4 nights, get the 5th night free.” Taking advantage of the deal, a guest purchases 5 nights for \$400. Each night of the guest's 5-night stay is subject to the state hotel-motel fee.
 - (ii) Example: A hotel's rate for a one-night rental of 50 rooms is \$5000. In exchange for a guest's \$5000 payment for a 50-room block, the hotel gives the guest an additional room for one night at no additional charge. Because the guest has rented 51 rooms for one night at the price of \$5000, the state hotel-motel fee applies to each of the 51 rooms.
- (h) Franchisors. A Franchisor is not a Marketplace Innkeeper with respect to any Innkeeper defined above that is its Franchisee, provided that
 1. in the prior calendar year, such Franchisor and all of its Franchisees combined made annual gross sales in the United States of at least \$500 million in aggregate;
 2. such Franchisee maintains a valid certificate of registration as required by O.C.G.A. § 48-8-59; and
 3. such Franchisee and Franchisor maintain a valid contract providing that the Franchisee will collect and remit all applicable taxes and fees that the Franchisor would otherwise be required to collect and remit as a Marketplace Innkeeper for such Franchisee.

(7) Extended Stay Rentals.

- (a) When a customer rents an Accommodation, the Innkeeper must collect the state hotel-motel fee regardless of whether the Accommodation is rented under a contract that provides that the customer will have the right to occupy the Accommodation for longer than 30 consecutive days.
- (b) The first 30 days of the rental are subject to the state hotel-motel fee and will not be refunded even if the rental becomes an Extended Stay Rental.
- (c) Once a rental becomes an Extended Stay Rental (upon the 31st day of continuous occupancy), no further state hotel-motel fee must be collected with respect to the Accommodation, provided that the customer's days of consecutive occupancy are not interrupted. This is so, regardless of whether the right to occupy the Accommodation is granted under separate, successive contracts.
- (d) Moving to a different Accommodation in the same facility does not interrupt the period of consecutive occupancy.

1. Example: A hotel customer occupies a particular room in a hotel for 10 consecutive days and, on the 11th day, changes to a different room in the same hotel and occupies the second room for an additional 30 consecutive days. The rental becomes an Extended Stay Rental on the 21st day that the customer occupies the second room in the same hotel.
- (e) An extended stay occupant who transfers from one facility to a different facility, whether or not run by the same operator, loses Extended Stay Rental status and must complete the required number of days at the second hotel before the rental becomes an Extended Stay Rental there. Similarly, the transfer to a different facility by a customer who is not yet an extended stay occupant interrupts the number of consecutive days necessary to establish an Extended Stay Rental.
1. Example: A customer rents a suite of rooms in a hotel. After 20 days, the customer moves to a different Hotel owned by the same operator. The customer spends another 20 days at the second hotel. The rental is not an Extended Stay Rental at either hotel because the customer did not occupy a hotel room for at least 31 consecutive days at either hotel. The customer may not aggregate the time spent between the two hotels to meet the 31-consecutive-day criteria for Extended Stay Rentals.
- (f) For the purpose of determining whether a business entity qualifies as an extended stay occupant of an Accommodation, days that the business pays rent for the Accommodation, regardless of whether the Accommodation is actually occupied, are considered days that the Accommodation is occupied by the business, provided that the employee, customer, client, or other person staying in the Accommodation does not reimburse or pay the business for the right to occupy the Accommodation. However, days for which an employee, customer, client, or other person pays or reimburses the business for the right to occupy the Accommodation, whether as part of a package or otherwise, are considered days that the Accommodation is occupied by that person and are not considered days of occupancy by the business. The renewal of a rental contract between a business and a provider of Accommodations, as long as the rental is continuous, does not interrupt the business's occupancy.
1. Example: A company rents three hotel rooms. One room is occupied by an employee of the company, one room is occupied by a client, and the last room remains unoccupied. The employee does not pay for the right to occupy the room; however, the client compensates the company for use of the room. The days that the room is occupied by the company's employee and the days that the third room remains unoccupied are considered to be days of occupancy for the company with respect to such rooms. Accordingly, after 31 consecutive days of occupancy, the company is considered to be an extended stay occupant of the two rooms. The days that the room is occupied by the company's client, however, are not

considered to be days that the room is occupied by the company. Consequently, the company cannot become an extended stay occupant with respect to the room that is occupied by the client.

- (g) If an extended stay occupant permits the hotel to rent his or her Accommodation to other customers during the occupant's temporary absence, and the occupant does not have the right to occupy any other Accommodation in the hotel during that absence, the occupant's period of consecutive occupancy in that hotel is considered to have ended. Therefore, when the occupant resumes occupancy in the hotel, he or she will not be considered an extended stay occupant of the hotel until a new 31-day period of consecutive occupancy is established. The customer to whom the Accommodation is rented during the former extended stay occupant's absence may establish extended stay status based on whether such customer occupies the Accommodation for the requisite number of consecutive days.
- (8) **Guaranteed no-show revenue.** When the agreement between the Innkeeper and customer provides that the Accommodation will not be released or offered to other occupants even if the customer never occupies the Accommodation, the Innkeeper must collect the state hotel-motel fee for every night for which the customer has reserved and paid for the Accommodation, regardless of whether the customer actually stays in the Accommodation.
- (9) **Returns.** Innkeepers must report and remit the state hotel-motel fee electronically on a separate return on or before the 20th day of the month following the month of collection. Innkeepers must file a return even for months during which no Accommodations were provided. If an Innkeeper fails to collect the state hotel-motel fee, the Innkeeper must report and remit the state hotel-motel fee on or before the 20th day of the month following the month of an Accommodation for which the state hotel-motel fee should have been collected. Only one return and one state hotel-motel fee account number are required, even if the Innkeeper has multiple locations.
- (10) **Penalties and interest.**
 - (a) When any Innkeeper fails to file a return or to pay the full amount of the state hotel-motel fee due, in addition to other penalties provided by law, a penalty will be added to the fee in the amount of 5 percent or \$5.00, whichever is greater, if the failure is for not more than 30 days. An additional penalty of 5 percent or \$5.00, whichever is greater, will be added for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation must not exceed 25 percent or \$25.00 in the aggregate, whichever is greater. If the failure is due to reasonable cause shown to the satisfaction of the commissioner in affidavit form attached to the return and remittance is made within ten days of the due date, the return may be accepted exclusive of penalties and interest. In the case of a false or fraudulent return or of a failure to file a return where willful

intent exists to defraud the State of the state hotel-motel fee, a penalty of 50 percent of the fee due will be assessed.

- (b) The state hotel-motel fee bears interest in accordance with O.C.G.A. § 48-2-40.
- (11) **Vendors' compensation.** In reporting and paying state hotel-motel fees, each Innkeeper is allowed the following deduction, but only if the return was timely filed and the amount due was not delinquent at the time of payment:
- (a) A deduction of 3 percent of the first \$3,000.00 of the combined total amount reported due on such return for each location; and
 - (b) A deduction of one-half of 1 percent of that portion exceeding \$3,000.00 of the combined total amount reported due on such return for each location.
- (12) **Periods of limitation for assessment of state hotel-motel fees.**
- (a) Except as otherwise provided in this paragraph, in the case where a return is filed, the state hotel-motel fee must be assessed within three years after the return was filed. A return filed before the last filing day prescribed by law will be considered as filed on the last day. If an extension of time for filing a return is granted and the return is filed on or before the extended date, the return will be considered as filed on the extended due date.
 - (b) In the case of a false or fraudulent return filed with the intent to evade the state hotel-motel fee or a failure to file a return, the state hotel-motel fee may be assessed at any time.
 - (c) Where, before the expiration of the time prescribed in this paragraph for the assessment of the state hotel-motel fee, both the commissioner and the person subject to assessment have consented in writing to its assessment after such time, the state hotel-motel fee may be assessed at any time prior to the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period. The commissioner is authorized in any such agreement to extend similarly the period within which a claim for refund may be filed.
 - (d) If a claim for refund of state hotel-motel fees paid for any period is filed within the last six months of the period during which the commissioner may assess the amount of state hotel-motel fees, the assessment period is extended for a period of six months beginning on the day the claim for refund is filed.
 - (e) No action without assessment may be brought for the collection of any state hotel-motel fee after the expiration of the period for assessment.
- (13) **Refunds.** State hotel-motel fees erroneously or illegally assessed and collected and interest on those fees will be refunded in accordance with O.C.G.A. § 48-2-35. Refund claims must be filed electronically on the Georgia Tax Center website. Refund claims

submitted in any other manner will not be accepted. When a Hotel customer files a refund claim, the Claim for Refund must be accompanied by a properly completed Waiver of Vendor's Rights (Form ST-12A) or a Purchaser's Claim for Sales Tax Refund Affidavit (Form ST-12B). When the claimant has remitted state hotel-motel fees directly to the Department, the ST-12A and ST-12B are not required.

Authority: O.C.G.A. §§ 48-2-12, 48-13-50.2, 48-13-50.3, 48-13-50.4, 48-2-35, 48-2-40.