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THIS CORRESPONDENCE IS A LEGAL GUIDELINE
OF THE ATTORNEY GENERAL
SUBMITTED FOR YOUR GUIDANCE

RE: Sales Taxes Upon Room Rentals At Boise State University

Dear Mr. Hooten:

Your letter regarding the applicability of sales taxes upon room rentals at BSU has been referred to me for response. As I understand the facts, BSU rents dorm rooms to various individuals and groups during the summer months. With limited exceptions, the rooms are rented to persons or groups involved in educational activities such as conferences, symposia, or other training programs. You have asked the following questions regarding the Idaho Sales Tax, the Travel and Convention Tax and the Greater Boise Auditorium District Tax:

1. Do the various taxes mentioned above apply to the summer rental of Boise State University dorms by individuals and groups who hold conferences, i. e., educational programs?

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2. Do the various taxes apply to noneducational individuals and groups such as Ore-Ida Women's Challenge?
3. Are all the taxes mentioned applicable to the rental of Boise State University dorms?

As discussed herein, we conclude that the three taxes apply to such room rentals provided the rentals do not exceed the length of stay provisions of the three tax statutes.

By way of background, it should be noted that the state and its agencies, departments and institutions are exempt from sales tax upon purchases they make. However, sales by the state and its agencies to others are generally not exempt from taxation unless the purchaser qualifies for some exemption. The only specific tax exemption for sales by the state relates to the sale of official documents (Idaho Code § 63-3622AA).

Since there is no specific exemption for the rental of dormitory rooms, we must look to the statutes applying the taxes to determine if tax should be charged upon such room rentals. As to the sales tax, Idaho Code § 63-3612 defines "sale" in pertinent part as follows:

"Sale" shall also include:

...

- (g) Providing hotel, motel, tourist home or trailer court accommodations and services, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days.

The terms "hotel, motel, tourist home or trailer court" are not defined in the Sales Tax Act. Pursuant to authority granted by Idaho Code § 63-3624, the State Tax Commission has adopted Sales Tax Regulation 12-3 [IDAPA 35.02.12-3], which adopts the provisions of the Idaho Hotel/Motel Room and Campground Sales Tax Regulations for purposes of the Sales Tax Act. Copies of those regulations are enclosed for your convenience. Regulation 3 of those regulations [IDAPA 35-06.03] defines hotel or motel as follows:

a. Hotel or Motel Defined. --The words "hotel" or "motel" as used in these regulations means any person, partnership, corporation, trustee, receiver, or other association, regularly engaged in the business of furnishing rooms for use or occupancy (whether personal or commercial) in return for a consideration or which holds itself out as being regularly engaged in such business. Furnishing rooms for a consideration includes but is not limited to rooms provided for personal occupancy and rooms provided for meeting, convention, or other commercial purposes. The rental of condominiums or townhouses is subject to tax unless exempted under the provisison of Regulation 07. (Emphasis added)

Thus, the furnishing of rooms for consideration, including the furnishing of rooms for meetings or conventions, is included within the definition.

It might be argued that the university should not be construed to be a "person" for purposes of the regulation. However, we do not think the argument would be sustained for the following reasons. "Person" is defined in Idaho Code § 63-3607 to include individuals, various types of entities, and "any other group or combination acting as a unit." The statute has long been administratively construed to include sales by the state and its agencies and political subdivisions (Sales Tax Regulation 22,16e). Therefore, it is unlikely that the tax commission intended to exclude public entities from the requirements of the regulation. Also, if the legislature intended the state to be excluded from the definition of "person," the public documents exception provided by Idaho Code § 63-3622AA would be unnecessary.

Therefore, we interpret the Sales Tax Act as applying to the university's furnishing rooms for consideration, including furnishing rooms for meetings or conventions.

The pertinent provisions regarding the Greater Boise Auditorium District Tax are set forth in Idaho Code §§ 67-4917A and 67-4917C. Idaho Code § 67-4917A provides in pertinent part:

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The purposes of this act are to provide authority to auditorium or community center districts organized under chapter 49, title 67, Idaho Code, to levy and collect a "hotel/motel room sales tax" on the receipts derived by hotels and motels within the district from the furnishing of hotel and motel rooms, except no tax shall be imposed where residence therein is maintained continuously under the terms of a lease or similar agreement for a period in excess of seven (7) days.

Idaho Code § 67-4917C provides in pertinent part:

A district which has levied a sales tax pursuant to section 67-4917B, Idaho Code, may contract with the state tax commission for the collection and administration of the tax in like manner, and under the definitions, rules and regulations of said commission for the collection and administration of the state sales tax under chapter 36, title 63, Idaho Code, on receipts from the furnishing of hotel and motel rooms.

Therefore, the auditorium district tax applies in like manner as the state sales tax, except that it does not apply when the length of stay exceeds seven days.

The pertinent statutory provisions regarding the Idaho Travel and Convention Tax are Idaho Code §§ 67-4711 and 67-4718.

Idaho Code § 67-4711(4) defines "hotel/motel" as:

... an establishment which provides lodging to members of the public for a fee, and shall include condominiums, townhouses or any other establishments which makes a sale as herein defined.

Idaho Code § 67-4711(6) defines "sale" as:

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... the renting of a place to sleep, to an individual by a hotel, motel, or campground for a period of less than twenty-nine (29) continuous days.

Idaho Code § 67-4718(1) provides in pertinent part:

From and after January 1, 1985, there is hereby levied and imposed an assessment at the rate of two percent (2%) of the amount of a sale as defined in section 67-4711, Idaho Code. The receipts from the assessment levied by this section shall be paid to the state tax commission in like manner, and under the definitions, rules and regulations of said commission for the collection and administration of the state sales tax under chapter 36, title 63, Idaho Code.

Therefore, the Idaho Travel and Convention Tax applies to room rentals in the same manner as the state sales tax, except that it does not apply when the length of stay exceeds 28 days.

In summary, the three taxes apply to dormitory room rentals by Boise State University. The state sales tax applies when the length of stay is 30 days or less. The Idaho Travel and Convention Tax applies when the length of stay is 28 days or less. The auditorium district tax applies when the length of stay is seven days or less.

Sincerely,



David G. High
Deputy Attorney General
Chief, Business Affairs and
State Finance Division

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