

Tax Memo – NJ Short Term Rentals Now Subject to Sales Tax & State Occupancy Fees

IMPORTANT NOTE 1: It is NOT enough for a real estate broker to only hold the keys or other means of physical entrance to the property to avoid a sales tax liability. See detailed requirements below. Remember, if the division of taxation audits you, and finds sales tax should have been collected, the landlord, NOT the real estate broker, will be liable for the taxes and associated interest and penalties.

This is in response to your inquiry to the New Jersey Division of Taxation regarding the application of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to charges for the rental of transient accommodations.

Effective October 1, 2018, charges for the rental of transient accommodations are subject to Sales Tax (N.J.S.A. 54:32B-1 et seq.) and the State Occupancy Fee (N.J.S.A. 54:32D-1 et seq.). Depending on where the occupancy occurs, the transient accommodation may also be subject to various other state and municipal taxes, assessments, and fees.

A transient accommodation is a room, group of rooms, or other living or sleeping space for the lodging of occupants, including but not limited to residences or buildings used as residences. This definition includes rentals made through transient space marketplaces, as well as rentals that are made directly by the homeowner through classified listing sites, local newspaper ads, referrals from friends/family, or placing a sign on the home, etc.

In response to your specific inquiries:

1) What are the requirements for the real estate broker exclusion?

Charges for the rental of a transient accommodation are not subject to tax when the following criteria (the real estate broker exclusion) are satisfied:

- J The sale is executed by a real estate broker licensed by the New Jersey Real Estate Commission;
- J The keys or other means of physical entrance to the property are provided to the lessee at the location of the offsite real estate broker;
- J The rental property is private residential property; and
- J The lessor does not provide common hotel services such as maid service, room service, or linen-changing service.

[See N.J.S.A. 54:32B-2(ggg); see also Taxes Imposed on Charges for the Rental of Transient Accommodations, TB-81(R).]

2) What is required for a sale to be “executed by a real estate broker?”

A real estate broker is a person, firm, or corporation who, for a fee, commission, or other valuable consideration, or by reason of a promise or reasonable expectation thereof, does any of the following:

- J Lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein; or
- J Collects or offers or attempts to collect rent for the use of real estate or solicits for prospective purchasers; or
- J Assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate; or
- J Negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands."

[N.J.S.A. 45:15-3.]

In order for the sale to be "executed by a real estate broker," the broker must perform one or more of the functions described above.

3) Does it matter whether the rent check is written to the real estate broker or the property owner?

No. A rental transaction that satisfies all four requirements for the real estate broker exclusion is not taxable, regardless of the person to whom the check is written.

4) With reference to the example on the bottom of page 4 of TB-81(R), does it matter whether the rent check is written to the real estate broker or the property owner?

See response to question 3) above.

5) Is a rental transaction subject to tax when the customer obtains the property key (or digital access code) from a lockbox that is not located at the real estate broker's office?

Yes. A rental transaction is subject to tax unless all four of the criteria listed in the response to question 1) are satisfied. Specifically, one of the four criteria requires that "the keys or other means of physical entrance to the property are provided to the lessee at the location of the offsite real estate broker." Accordingly, a transaction does not qualify for the real estate broker exclusion when the lessee obtains the property keys from a lockbox that is not at the location of the real estate broker. The transaction is therefore subject to tax.

New Jersey has come up with the term "Transient Rentals" to describe the rental of Real Estate for a period of less than 90 days. This can include the rental of a single room, or an entire home. The term does not apply to Hotels, Motels, Dormitories, Campsites, Meeting Rooms, Hospitals or Nursing Homes. These facilities are already subject to their own taxes and fees.

The Transient Rental designation will affect all short term vacation rentals and homeowners who rent out rooms on a short term basis through services such as Airbnb. You will be subject to taxes on rentals

whether you use a service such as Airbnb, which is termed as a Transient Space Marketplace, or rent the property yourself through a classified ad or sign on the street.

However, if you use a Transient Space Marketplace, they would be required to collect and pay all applicable taxes on your behalf.

If not, the individual property owner is required to register collect and remit all applicable taxes.

A Transient Space Marketplace does not charge the property owner for placing an ad on their website. They collect all rents and fees from the renter, and remits a net amount to the property owner after deducting its fees and expenses.

A service that charges an upfront fee for placing an ad for rental and does not collect the rent from the customer, is not considered a Transient Space Marketplace.

There are exceptions to the Transient Rental designation that would exempt a property owner from becoming subject to the additional taxes on rentals. These include:

-)] Realtor brokered transactions, where the tenant writes their check to the Realtor, not the landlord, and where the key is picked up at the realtor's offsite location
-)] Rental to a non profit organization that has been granted an exemption from ST-50.
-)] Rental to the federal government or the State of New Jersey or any of their agencies or instrumentalities.

If your property rental is considered a Transient Rental, it will be subject to ALL of the following taxes:

Sales Tax:

The law imposes Sales Tax on charges for the rental of transient accommodations at the rate of 6.625 percent.

State Occupancy Fee:

The law imposes the State Occupancy Fee at the rate of 5 percent on charges for the rental of transient accommodations that are subject to Sales Tax. However, in municipalities where the rental of transient accommodations are already subject to a local tax on occupancies, the State Occupancy Fee is imposed at a lower rate (Atlantic City: 1 percent; Newark and Jersey City: 1 percent; and the Wildwoods: 3.15 percent).

Municipal Occupancy Tax:

The law authorizes any New Jersey municipality, other than Newark, Jersey City, Atlantic City, Wildwood, Wildwood Crest, and North Wildwood, to amend or adopt an ordinance that imposes the Municipal Occupancy Tax on charges for the rental of transient accommodations in that municipality, which can be up to 3 percent.