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AMC 12.20 Room Tax **INFORMATIONAL #8**

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The “Right to Occupy” a Room Qualifies as “Rent”

Anchorage Municipal Code (AMC) Chapter 12.20, Room Tax, incorporates several precisely defined terms to allow for the administration of this tax code. Section 12.20.010 defines the noun “rent” to be “the monetary value of any consideration, whether money, property, or services, given in exchange for the right to use or occupy a room.” In addition, Section 12.20.010 defines “to rent” or any conjugation of the verb form “rent” to mean “to provide or obtain the right to use or occupy a room in exchange for rent.” Within the context of AMC Chapter 12.20, there is no prerequisite for a guest to physically occupy a room before it can be established that a room rental transaction has occurred.

What some may call an “advance deposit”, “reservation fee” or “cancellation fee” or “guaranteed no-show fee” is determined by the Department to be a “rent” transaction pursuant to AMC Chapter 12.20. This determination is based on the substance, rather than form, of the transaction as evidenced by the following attributes:

1. A reservation transaction is a contractual agreement, whether written or oral, during which the customer acquires the right to occupy a room on a pre-designated date and the operator acquires consideration in the form of compensation (prepayment) or authorized access to compensation (credit card number).
2. The term of the “right to occupy” a room can be measured - it runs from the date the room reservation was offered and accepted through the pre-designated reserved date or when the reservation is canceled, whichever comes first.
3. The cost of the “right to occupy” the room can be measured - it is the amount of the compensation to the operator.
4. The existence of the customer’s “right to occupy” a room is evidenced by the fact that the operator’s records reflect the reservation of a room for the customer on the pre-designated date.

The compensation paid for the “right to occupy” is a liability, not rent, until the “right to occupy” expires and the operator

1. Applies the previously collected compensation to the guest’s bill,
2. Retains some or all of the previously collected compensation, or
3. Bills a previously authorized amount (e.g. a credit card used to hold a reservation).

For example, if the customer cancels the room reservation in a manner considered timely by the operator, the operator may choose to not enforce the contract and return the compensation received. Under this scenario, the transaction would result in no tax required to be remitted to the Municipality. However, if the operator chooses to enforce the reservation contract and retain or collect consideration, a tax in the amount of 12% (see note) of the transaction proceeds must also be collected and remitted to the Municipality in accordance with AMC Chapter 12.20.

Similarly, gift certificates secure a “right to occupy”. The purchaser receives a document to give to another in exchange for compensation. However, gift certificates are unique in that one cannot predict when or if they will be used. Gift certificates are a liability, not rent, until the gift certificate is given to the operator as partial or full compensation for a room. If the gift certificate is not adequate to cover both room rental and tax, an additional amount must be collected at the time the gift certificate is used to pay for a room so the correct total tax due has been received by the operator. If the gift certificate is never used or expires prior to use, no tax is due.

If a gift certificate is used to secure a reservation (i.e. meets the four attributes listed earlier for “advance deposits”, etc.), the gift certificate becomes an advance payment and should be treated in accordance with the rules outlined earlier in this informational.

Note: Effective Jan. 1, 2006, the room tax rate increased to 12%. The 8% still applies to any guest stays or adjustments for guest stays prior to Jan. 1, 2006. If a guest stay started in 2005 and ended in 2006, the appropriate tax rate should be applied to each date.

For more information, please visit our website at: www.muni.org/treasury and click the “Room Tax” link, or contact:
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