



ADMINISTRATIVE RULE REVIEW

Amended Rule	Rule No. 150-320-0040	
	Page Page 1 of 3	Last Revised Date October 20, 2016
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2016	Hearing Scheduled November 22, 2016

PURPOSE: Amendment of the rule provides additional clarity of non-optional fees that are subject to the state transient lodging tax. The amendment also removes the requirement for a lodging provider to register with the department and it removes the tie to local lodging tax treatment of lodging packages for calculation of the state transient lodging tax.

1 **150-320-0040**

2 **State Lodging Tax**

3 (1) Definitions. For purposes of ORS 320.305 and 320.308 and the rules thereunder:

4 (a) "Nonprofit facility" means a lodging facility that is owned by an IRC 501(c) exempt organization or
5 an organization described in ORS 65.001(31) and that is not operated for profit.

6 (b) "Transient lodging provider" includes a person who operates a facility, whether in the capacity of
7 owner, managing agent, lessee, sub-lessee, mortgagee in possession, licensee, concessionaire, or any
8 other capacity.

9 (2) Public and Private Providers Must Collect the Tax. The state lodging tax applies to rents charged for
10 dwelling units, recreational vehicle spaces, and tent spaces provided by public and private persons. It
11 applies to dwelling units and recreational vehicle and tent spaces offered to the general public by state
12 and local parks departments. It also applies to dwelling units and spaces offered for rent to the general
13 public on federal lands operated by a concessionaire on a contract basis with a federal agency, such as the
14 U.-S. Forest Service, Bureau of Land Management, and the National Parks Service.

15 (3) Services Included in the Fee for Lodging. If a separate fee is charged for a service and the service is
16 optional, that fee is not subject to the state lodging tax. Examples of optional services include, but are not
17 limited to: pay-per-view movies, room service, use of an honor bar or restaurant meals charged to the
18 room. If a separate fee is charged for a service and the service is not optional, or if the value of a service
19 is included in the ~~normal~~-standard lodging rate, the amount allocated to the service is subject to the state
20 lodging tax. Examples of fees for non-optional services include, but are not limited to: cleaning service
21 fees, ~~free breakfast~~, pet charges, ~~free transportation to the airport and~~ fee for providing an extra bed,
22 service fees and processing fees. Examples of services that are included in the standard lodging rate
23 include, but are not limited to: free breakfast and free transportation to the airport. If the provider offers a
24 lodging package that includes something that is not associated with the actual lodging or is provided by a
25 third party, only the regular lodging rate that would have been charged absent the package item is subject

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1 to the state lodging tax. Examples of lodging packages include, but are not limited to: a package
 2 consisting of a night of lodging and a round of golf for two, or a romance package that includes a night of
 3 lodging, a bottle of wine and dinner at a local restaurant. ~~Any allocation made for the state lodging tax
 4 should be consistent with the allocation for a local lodging tax.~~

5 **Example 1:** The ABC Bed and Breakfast charges \$100 per night for a room. Guests are provided a
 6 breakfast that is included in the per-night fee. Guests may also have lunch or dinner at ABC and may
 7 charge the cost of these meals to their room. ABC will collect tax on \$100 per night because the
 8 breakfast is included in the room fee. The tax does not apply to any charges for optional meals purchased
 9 by ABC's guests.

10 **Example 2:** The High Mountain Resort offers winter lodging packages for customers. Customers can
 11 purchase a weekend package that includes two nights lodging and two ski lift tickets for a nearby ski
 12 resort for \$250. Their regular charge for weekend lodging during the winter for a two night stay is \$200.
 13 The state lodging tax will be collected on \$200 because that represents the charge for providing lodging.

14 **Example 3:** The Highlife Hotel charges a standard room rate based on single occupancy. The Young
 15 family has two children and a dog. They rent a room for one night. The basic room rate is \$80 per night.
 16 There is a \$10 charge for a second adult. There is no charge for the children. The Youngs request a crib
 17 that costs an additional \$10. There is also a \$10 charge for the family dog. The state lodging tax applies
 18 to all of the additional fees as well as the standard room rate. The total amount subject to tax is \$110.

19 [Example 4: The Hedgehog Inn works with INEZ.com, a transient lodging intermediary. The Stubblefield](#)
 20 [family used INEZ.com to book a room at the Hedgehog Inn for their annual family reunion. The standard](#)
 21 [room rate is \\$100. Additionally, INEZ.com charges a 5 percent processing fee. The state lodging tax](#)
 22 [applies to the 5 percent processing fee as well as the standard room rate. The total amount subject to the](#)
 23 [tax is \\$105 \(\\$100 room rate plus 5 percent processing fee\).](#)

24 (4) Use of a Managing Agent. If a transient lodging provider uses a managing agent that is not an
 25 employee, the managing agent is considered the provider for the purposes of the tax and has the same



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1 duties and liabilities as the operator. Compliance with the provisions of the state lodging tax by either the
2 lodging provider or the managing agent is considered compliance by both.

3 ~~(5) Registration of Providers. A transient lodging provider must register with the department on forms~~
4 ~~provided by the department.~~

5 (6) Penalty Imposed. The person submitting the return required by ORS 320.315 must sign the return
6 and is subject to the penalty for false swearing under ORS 162.075, which is a Class A misdemeanor.

7 **Stat. Auth.:** ORS 305.100, 320.315

8 **Stats. Implemented:** ORS 320.305