**NEBRASKA DEPARTMENT OF REVENUE**

**TITLE 316 NEB. ADMIN. CODE, CHAPTER 68**

**LODGING TAX REGULATIONS**

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**REG-68-003 PERMITS………………………………………………………………………..7**

(Neb. Rev. Stat. §§ 77-2711(10) and 81-3722. \_\_\_\_\_.)

**REG-68-001 STATE AND COUNTY LODGING TAXES; IMPOSITION AND RATE…3**

(Neb. Rev. Stat. §§ 81-3715, 81-3716, and 81-3717.\_\_\_\_\_)

**Reg-68-001 through Reg-68-010 are repealed and replaced as follows:**

**REG-68-001 STATE AND COUNTY LODGING TAXES; IMPOSITION AND RATE**

001.01 **State Lodging Tax.** The Nebraska Visitors Development Act, Neb. Rev. Stat. § 81-3715, imposes a state lodging tax to be administered by the Nebraska Department of Revenue (Department). The rate of the state lodging tax is 1% of the gross receipts for occupancy of any space furnished by a hotel in Nebraska.

001.02 **County Lodging Tax for Visitors Promotion.** Any county may impose a county lodging tax which will be collected and administered by the Department and remitted to the adopting county for the purpose of visitors promotion. The tax must be at the rate of one-half percent, one percent, one and one-half percent, or two percent of the gross receipts for occupancy of any space furnished by a hotel in the county.

001.02A A county may only impose a lodging tax after its governing body has held a public hearing and adopted resolutions to impose the tax and establish both a County Visitors Promotion Fund and a visitors committee to advise the county board in distributing the proceeds from the tax.

001.02B Collection and administration of the county lodging tax imposed under this subsection will not begin until the first day of the next calendar quarter that is at least 120 days after the Department receives certified copies of the adopting resolutions from the county.

001.02C The funds in the County Visitors Promotion Fund must be used to promote, encourage, and attract visitors to come to the county and use the travel and tourism facilities within the county.

001.03 **County Lodging Tax for Visitors Improvements.** Any county may impose an additional county lodging tax which will be collected and administered by the Department and remitted to the adopting county for the purpose of visitor improvements. The additional tax must be at the rate of one-half percent, one percent, one and one-half percent, or two percent of the gross receipts for occupancy of any space furnished by a hotel in the county.

001.03A A county may only impose an additional lodging tax after its governing body has held a public hearing and adopted resolutions to impose the tax and establish both a County Visitors Improvement Fund and a visitors committee.

001.03B Collection and administration of the county lodging tax imposed under this subsection will not begin until the first day of the next calendar quarter that is at least 120 days after the Department receives certified copies of the adopting resolutions from the county.

001.03C The funds in the County Visitors Improvement Fund must be used to improve visitor attractions and facilities in the county, except that no funds can be used to improve a facility in which parimutuel wagering is conducted. If the visitors committee determines that the visitor attractions in the county are adequate and do not require improvement, the governing body of the county, with the advice of the committee, may use the County Visitors Improvement Fund to promote, encourage, and attract visitors to the county to use the county's travel and tourism facilities.

001.04 The state lodging tax, the county lodging tax for visitor promotion, and the county lodging tax for visitor improvements are in addition to the sales and use tax imposed under the Nebraska Revenue Act.

001.05 If any county repeals or changes the rate of either of the county lodging taxes, the change will not be effective until the first day of the next calendar quarter that is at least 120 days after the Department receives certified copies of the adopting resolutions from the county.

(Neb. Rev. Stat. §§ 81-3715, 81-3716, and 81-3717.\_\_\_\_\_)

**REG-68-002 DEFINITIONS**

002.01 The following definitions apply as used throughout Chapter 68 of these regulations.

002.02 **Department.** Department means the Nebraska Department of Revenue.

002.03 **Gross Receipts for Occupancy.** Gross receipts for occupancy means the total amount of consideration, valued in money or otherwise, received for allowing individuals to occupy sleeping accommodations in a hotel.

002.03A Gross receipts for occupancy include all amounts received for sleeping accommodations including: extra charges for additional persons or beds; reservation fees, guaranteed no-show fees, or early departure fees; and extra charges for pets or smoking rooms.

002.03B Gross receipts for occupancy include any occupation tax and amounts received by the hotel operator from third parties. For example, payment from a rewards program administrator is part of gross receipts for occupancy.

002.03C Gross receipts for occupancy do not include charges that are not related to sleeping accommodations, for example: charges for telephone or cable service; movies or video games; room service; cancellation fees; restocking the mini-bar; ballrooms; banquet rooms; meeting rooms; copy or fax services; safe charges; fitness facility fees; valet or bellhop services; or child care services. Some of these charges, which are not subject to lodging tax, may be subject to sales tax.

002.03D Vacation packages. Gross receipts for occupancy do not include sales of vacation packages to the individual vacationer. The promoter or operator of the vacation package is the consumer and cannot issue a Nebraska Resale or Exempt Sale Certificate, Form 13, to the hotel operator. The promoter or operator of the vacation package must pay lodging taxes to any hotels participating in the package based on the gross receipts for occupancy of any space furnished by a hotel in this state.

002.03E Gross receipts for occupancy include only those amounts received by the hotel for occupancy in Nebraska. If a business that is unrelated to the hotel reserves a room or rooms on behalf of a customer, and charges the customer more than what it paid the hotel operator for the room or rooms, the gross receipts for occupancy is the amount received by the hotel operator from the unrelated business, not the amount paid by the customer to the unrelated business.

002.04 **Hotel.** Hotel means any commercial, nonprofit, or publicly-owned facility in which the public may ordinarily obtain sleeping accommodations for 30 days or less for a consideration. It includes any hotel, motel, campground, lodging house, or inn. Campgrounds include tent sites and RV pads or hookups.

002.04A Hotel does not include any licensed health care facility that is exempt from sales tax under 316 Neb. Admin. Code, Ch. 1 § 090.02, or any dormitory or facility regularly used to house students which is operated by a public educational institution or an educational institution established under Neb. Rev. Stat. §§ 79-1601 to 79-1607 or 85-1101 to 85-1111.

002.04B If a facility is not ordinarily a place where the public may obtain sleeping accommodations for 30 days or less (for example, an apartment complex) the fact that a unit or a small number of units may be rented for short periods of time for sleeping accommodations does not make the facility, or those units, a hotel.

002.04C Summer camps or church camps which include instruction, meals, and recreation are not ordinarily considered hotels. If the summer camp or church camp also allows individuals or groups to rent cabins for sleeping accommodations without providing instruction, meals, or recreation, those charges are subject to lodging tax.

002.05 **Hotel Operator.** Hotel operator means any person who is engaged in the business of operating a hotel in Nebraska.

002.06 **Occupancy.** Occupancy means the use or possession, or the right to the use or possession, of any sleeping accommodations in a hotel if the space is ordinarily used for sleeping accommodations and if the occupant's use, possession, or right to use or possess the space is less than 30 continuous days.

002.06A Occupancy does not include using a function room such as a ballroom, banquet room, reception room, or meeting room, provided it is not used as temporary sleeping accommodations.

002.06B The occupant must agree orally or in writing to occupy the unit for more than 30 days to exclude the consideration from gross receipts for occupancy.

002.07 **Occupant.** Occupant means any person or organization that, for a consideration, uses, possesses, or has a right to use or possess, any space in a hotel if the space is ordinarily used for accommodations. Occupant includes an organization that pays for a room for a period of 30 continuous days or more, even if a different person occupies the room each night, or a different room is provided each night.

002.08 **The Public.** The public means unspecified members of the general population who may obtain sleeping accommodations or may become eligible to obtain sleeping accommodations. For example, the fact that an individual must be a member of an organization or a certain age to obtain sleeping accommodations does not mean that the facility is not a hotel.

(Neb. Rev. Stat. §§ 81-3706 to 81-3709. \_\_\_\_\_.)

**REG-68-003 PERMITS**

003.01 Every hotel operator in this state must file a Form 20, Nebraska Tax Application, with the Department to obtain a Nebraska lodging tax permit.

003.02 A separate application for a lodging tax permit is required for each hotel as defined in Reg-68-002.04 that is located in this state. The owner of a hotel whose accommodations are located in different counties is deemed to be operating a hotel in each of the counties and is required to obtain a separate permit for each hotel. For example, a group of cabins along a river that are located in two counties must obtain two permits.

003.03 Upon examination and approval of the application, the Department will issue a permit to the hotel operator for the specific hotel for which the application was filed. The permit cannot be transferred. It is valid only for the hotel operator in whose name it was issued and only for the business at the designated location of the hotel. The permit must be conspicuously displayed at the place of business.

003.04 Upon violation of any of the lodging tax statutes or regulations, the Department may revoke or suspend the permit or permits of the violator. The procedures governing revocation hearings are contained in the Practice and Procedure Regulations, 316 Neb. Admin. Code, Ch. 33.

003.05 If a permit has previously been suspended or revoked, the former permitholder must pay the Department a fee of $25 to renew or issue a permit after a first revocation, and $50 for each successive revocation. A new permit will not be issued to the same person until the Department is satisfied that the hotel operator will comply with the lodging tax statutes and regulations.

003.06 A person who, and each officer of a corporation which, engages in the business of operating a hotel in this state without a permit or permits or after a permit has been suspended, is guilty of a misdemeanor. Upon conviction, the person or corporate officer will be fined an amount not to exceed $500 for each day of operation without a permit.

003.07 Upon written request, the Tax Commissioner may provide the county board of any county which has a lodging tax with a list of the names and addresses of the hotels located within the county for which lodging sales tax returns have been filed, or for which lodging taxes have been remitted for the county.

(Neb. Rev. Stat. §§ 77-2711(10) and 81-3722. \_\_\_\_\_.)

**REG-68-004 LODGING TAX RETURNS AND RECORDS**

004.01 A Nebraska and County Lodging Tax Return, Form 64, is required for each period or portion of a period while a lodging tax permit is active. The return must be filed for every tax period even if there have been no gross receipts for occupancy.

004.02 **Lodging Tax Returns and Due Date.** Lodging tax permitholders must report and account for all gross receipts for occupancy. If the return is filed within 25 days following the tax period, the permitholder may deduct and withhold a collection fee from the amount of lodging tax which otherwise would be due.

004.02A Returns must be properly signed by the person required to file the return or by an authorized agent.

004.02B The return and the remittance are considered timely filed if received, delivered, or mailed, postage prepaid, on or before the 25th day of the month following the close of the reporting period. When the last day for filing falls on a Saturday, Sunday, or an approved holiday, the return is considered timely filed if received, delivered, or mailed, postage prepaid, on the next day which is not a Saturday, Sunday, or an approved holiday.

004.02B(1) A United States Postal Service postmark is conclusive evidence of the date of mailing for the purpose of timely filing a return.

004.02B(2) A private postage meter date or a date stamped by a private delivery service will be considered the date of mailing if the date of the stamp is no more than four days before the date the return is received by the Department, excluding Saturdays, Sundays, or approved holidays. If the date of the stamp is more than four days before the date the return is received by the Department, the return is considered filed on the date received.

004.02B(3) Failure to file the return or to remit the tax due by the due date will subject the taxpayer to a penalty equal to 10% of the unpaid tax or $25, whichever is greater. Interest is imposed at the rate specified in Neb. Rev. Stat. § 45-104.02 from the due date to the date payment is received.

004.02C The Tax Commissioner may require some or all taxpayers to file returns or remit payments electronically.

004.02D Remittance must be in the form of electronic funds transfer, check, credit card, money order, or other payment method as approved by the Tax Commissioner, made payable to the Nebraska Department of Revenue. Cash, post-dated checks, or postage stamps cannot be sent as payment. Cash may be used when payment is made in person at an office of the Department.

004.03 **Records Retention.** Every retailer is required to keep records in order to determine the amount of tax due. These records must include the normal books of account ordinarily maintained by the average prudent businessperson engaged in a similar activity, together with all documents supporting entries in the books of accounts. Schedules and working papers used in the preparation of the tax returns and all resale certificates and exemption certificates must be retained. The records which must be retained and the lengths of time they must be retained are described in 316 Neb. Admin. Code, Ch. 1 § 008, Records.

004.04 **Right to Examine Records.** The Tax Commissioner, or any person authorized in writing by the Tax Commissioner, may examine the books, papers, records, electronic media, or equipment of any person to ascertain or verify the accuracy of any return filed; or, if no return is filed by the person, to ascertain and determine the amount required to be paid as provided in 316 Neb. Admin. Code, Ch. 1 § 010, The Sales and Use Tax Return.

004.05 **Confidential Information.** Except as authorized by Neb. Rev. Stat. § 77‑2711 with regard to sales and use taxes, it is a Class I misdemeanor for the Tax Commissioner, employees or agents of the Department, or any other persons receiving information from them to:

004.05A Divulge or to make known in any manner the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty;

004.05B Divulge or to make known in any manner the amount or source of income, profits, losses, expenditures, or any particular item disclosed in any return; or

004.05C Permit any return, copy of a return, or any book containing any abstract or items of a return to be seen or examined by any person not connected with the Department.

(Neb. Rev. Stat. § 81-3722.\_\_\_\_\_.)

## REG-68-005 EXEMPTIONS

005.01 **Nonprofit Entities.** The same nonprofit entities which are exempt from sales and use taxes under the Nebraska Revenue Act are exempt from the lodging tax once they have received a certificate of exemption. See 316 Neb. Admin. Code, Ch. 1 §§ 090, 091, and 092 for a list of nonprofit organizations and educational institutions that are exempt from the lodging tax.

005.02 **Federal Government.** The federal government and it instrumentalities are exempt from the lodging tax. See 316 Neb. Admin. Code, Ch. 1 § 072, United States Government and Federal Corporations.

005.03 **Nebraska and Local Governmental Units.** Nebraska governmental units including, but not limited to: the state; any county, city, township, or village; any rural or suburban fire protection district; any irrigation or reclamation district; or the irrigation division of a public power and irrigation district; are exempt from the lodging tax. This exemption does not apply to purchases used in the business of furnishing gas, water, electricity, or heat. See 316 Neb. Admin. Code, Ch. 1 § 093, Governmental Units.

005.04 **Exempt Sale Certificates.** The exempt nonprofit organization or governmental unit must provide an exempt sale certificate or other adequate proof to the permitholder to purchase accommodations without paying lodging tax and to support a deduction from gross receipts on the lodging tax return. See 316 Neb. Admin. Code, Ch. 1 § 014, Exempt Sale Certificate.

005.05 **Purchases by Employees of Exempt Entities.** Purchases by employees of exempt nonprofit organizations or exempt governmental units using their own funds are taxable, even if the purchases are made on behalf of the exempt nonprofit organization or governmental unit, and even if the exempt nonprofit organization or governmental unit will be reimbursing the employees for expenses incurred by the exempt organization or governmental entity.

(Neb. Rev. Stat. § 81-3722.\_\_\_\_\_.)

**REG-68-006 DUTIES OF THE DEPARTMENT IN ADMINISTERING THE STATE AND COUNTY LODGING TAXES**

006.01 **Collection of State and County Lodging Taxes.** The Department must collect both the state and county lodging taxes in the same manner as state and local sales and use taxes are collected. All proceeds from the state lodging tax are deposited in the State Visitors Promotion Fund and used as provided in Neb. Rev. Stat. § 81-3717.

006.02 **County Lodging Tax Distribution.** Any county lodging tax imposed under Reg-68-001 will be collected and administered by the Department and remitted to the county.

006.02A Counties must deposit all amounts received in the County Visitors Promotion Fund or the County Visitors Improvement Fund as directed by the ordinances that authorized the imposition of the county lodging tax.

006.02B Amounts deposited in the County Visitors Promotion Fund must be used as provided in Reg-68-001.02C.

006.02C Amounts deposited in the County Visitors Improvement Fund must be used as provided in Reg-68-001.03C

006.03 **Notice to Retailers.** The Department must provide 60 days’ notice to affected retailers of any adoption or termination of a county lodging tax or a change in rate. The Department may provide notice to retailers using the website of the Department or by other electronic means.

(Neb. Rev. Stat. §§ 81-3715, 81-3716, 81-3717, 81-3720, 81-3722, and 81-3723.\_\_\_\_\_.)