

Tax Alert



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ACTS OF 2016, CHAPTER 3 SALES AND USE TAX – TAXABLE PRICE – ACCOMMODATIONS

On January 21, 2016 the Maryland General Assembly overrode Governor Lawrence J. Hogan Jr.’s veto of Senate Bill 190 (2015 Regular Session). The legislation, now known as Chapter 3 of the Acts of 2016 (the “Act”), with an effective date of February 20, 2016, clarified certain defined terms used in the sales and use tax law and reaffirmed the State’s authority (which is reflected in sales and use tax laws existing prior to the Act) to impose the sales and use tax on all consideration paid by transient guests in furtherance of the rental of sleeping accommodations.

- “Accommodation” means the right to occupy a room or lodgings as a transient guest.
- Accommodation is included in the definition of tangible personal property, the sale or rental of which is subject to the sales and use tax.
- “Accommodations provider” means a person who owns, operates, or manages an accommodation and makes the accommodation available for sale or use to a buyer.
- “Accommodations intermediary” means a person, other than an accommodations provider, who facilitates the sale or use of an accommodation and charges a buyer the taxable price for the accommodation. Brokering, coordinating, or in any other way arranging for the sale or use of an accommodation by a buyer constitutes facilitating the sale of an accommodation. An accommodations intermediary is also included in the definition of a vendor for purposes of Maryland sales and use tax law.
- The taxable price for the sale or use of an accommodation facilitated by an accommodations intermediary includes the full amount of the consideration paid by a buyer for the sale or use of an accommodation.

If You Purchase Accommodations Through an Accommodations Intermediary

If you purchase an accommodation through an accommodations intermediary, such as an online travel company, the entire charge for the accommodation (the hotel charge plus any mark-up and fees charged by the accommodations intermediary) is subject to the sales and use tax. However, commissions paid by an accommodations provider to a person, such as a travel agent, after facilitating the sale or use of an accommodation and separately stated local hotel taxes are not included in the taxable price subject to the sales and use tax. The accommodations intermediary must separately state the Maryland sales and use tax on your record of sale. Any amount charged or retained by a vendor as a result of the cancellation of a room or lodging is subject to tax.

If You are an Accommodations Provider

Some examples of accommodations providers are hotel and motel owners and operators, owners of bed & breakfasts (B&Bs), and individuals who rent out their homes or rooms within their homes. Accommodations providers make sales subject to the sales and use tax, and therefore they must be registered with the Comptroller of Maryland to collect sales and use tax. Additional information on registration is provided below.

When an accommodations provider sells the right to occupy a room or lodgings as a transient guest (an accommodation), that person has a duty to collect the sales and use tax due on the sale and remit it to the State. The Maryland sales and use tax must be separately stated on the record of sale.

The duty to collect and remit the sales and use tax is waived if the buyer (such as an accommodations

intermediary) provides the accommodations provider with a resale certificate and the accommodations provider does not know or have reason to know that the sale is not for resale. If an accommodations intermediary does not provide a resale certificate prior to the sale, then the accommodations provider must charge the tax based on the room rate it charges the accommodations intermediary. An accommodations provider can verify the account number provided on a resale certificate via the Comptroller's online verification system at: <https://interactive.marylandtaxes.com/Business/VerifyExempt/User/Home.aspx>. Additional information on resale certificates is provided below.

The sales and use tax does not apply to charges to persons who rent living accommodations on a monthly basis or who are permanent residents. However, all rentals in resort areas for terms of 4 months or less are subject to the sales and use tax.

The sales and use tax does not apply to purchases by certain charitable and non-profit organizations certified by the Comptroller to be exempt organizations. Exemption numbers can be verified via the Comptroller's online verification system at: <https://interactive.marylandtaxes.com/Business/VerifyExempt/User/Home.aspx>.

If You are an Accommodations Intermediary

Some examples of accommodations intermediaries are online travel companies and hosting platforms that facilitate reservations and collect payments for booking transactions on behalf of an owner. Accommodations intermediaries make sales subject to the sales and use tax, and therefore they must be registered with the Comptroller of Maryland to collect sales and use tax. Additional information on registration is provided below.

When an accommodations intermediary sells the right to occupy a room or lodgings as a transient guest (an accommodation), that person has a duty to collect the sales and use tax due on the sale and remit it to the State. The entire charge for the accommodation (the hotel charge plus any mark-up and fees charged by the accommodations intermediary) is subject to the sales and use tax. However, commissions paid by an accommodations provider to a person, such as a travel agent, after facilitating the sale or use of an accommodation and separately stated local hotel taxes are not included in the taxable price subject to the sales and use tax. The accommodations intermediary must separately state the Maryland sales and use tax on each record of sale.

An accommodations intermediary may provide an accommodations provider with a resale certificate prior to the sale. Doing so waives the duty of the accommodations provider to collect sales and use tax on the sale to the accommodations intermediary. If an accommodations intermediary does not provide a resale certificate prior to the sale, then the accommodations provider must charge the tax based on the room rate it charges the accommodations intermediary. Additional information on resale certificates is provided below.

The sales and use tax does not apply to purchases by certain charitable and non-profit organizations certified by the Comptroller to be exempt organizations. Exemption numbers can be verified via the Comptroller's online verification system at: <https://interactive.marylandtaxes.com/Business/VerifyExempt/User/Home.aspx>.

How to Register for a Sales and Use Tax Account

You may register for a sales and use tax account online at:

<https://interactive.marylandtaxes.com/webapps/comptrollercra/entrance.asp>.

Once registered, you may file your sales and use tax returns and make payment online through the Comptroller's b-File system at: <https://interactive.marylandtaxes.com/Business/bFile/OSC/SelectApp.aspx>.

Resale Certificates

A resale certificate need not be in a particular form, but it shall state the name, address, and the Maryland sales and use tax registration number of the buyer, and state that the tangible personal property (in this case, the accommodation) is bought for the purpose of resale.

A vendor shall obtain a resale certificate before a sale is consummated to support every transaction for which the resale exclusion is claimed. A buyer (such as an accommodations intermediary) making repeated purchases from a vendor (such as an accommodations provider) may provide a blanket resale certificate to the vendor and claim the

resale exclusion on subsequent purchases by providing the buyer's Maryland sales and use tax registration number on its purchase orders. A suggested blanket resale certificate is available at:

[http://forms.marylandtaxes.com/samples/ Sample_Resale_Certificate.pdf](http://forms.marylandtaxes.com/samples/Sample_Resale_Certificate.pdf).

A vendor may not accept a resale certificate at any time if at the time of acceptance the vendor knows or should know that the sale is not for resale.

Maryland sales and use tax registration numbers contain 8 digits, the first of which is always a zero or a one. Numbers issued by other jurisdictions, federal employer or social security numbers, or numbers containing alphabetic characters are not valid on a resale certificate.

A vendor can verify the account number provided on a resale certificate via the Comptroller's online verification system at: **<https://interactive.marylandtaxes.com/Business/VerifyExempt/User/Home.aspx>**.