
COMPLIANCE ALERT



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Compliance Problem

It has been determined that some vendors of meals (including but not limited to hotels, wineries, clubs, and golf courses) are not correctly charging sales tax on the rental of banquet, meeting, or conference rooms when they provide or sell food and beverages in conjunction with the rental.

Solution

- ① The department utilizes the “true object” test to establish the sales tax obligations of vendors of meals when they make charges for the rental of a room in conjunction with the sale or provision of food or beverages. The true object test determines whether the rental of the room or the provision for food and beverages is the true object of the transaction (see Illinois regulation 86 Ill. Adm. Code 130.2145 (e)).

If it is determined that the provision of food and beverages is the true object of the transaction, then the room rental charges are subject to Retailers’ Occupation Tax (ROT). The charges for the room are part of your cost of doing business and are includable in your gross receipts, even if separately stated on the bill or agreement between you and your customer.

If the true object is the rental of the room, then the room charges are not subject to ROT.

◆ Determining the true object

- If you provide or sell either alcoholic beverages or food other than snacks and charge for room rental, the true object of the transaction is the provision of food and your room charges are subject to tax.

Note: Even if an outside caterer is used, you may still incur ROT on the rental of the room. If you specify the caterers that your customer may choose from, this type of restriction requires that you incur ROT on the room rental. If you do not restrict the catering, you do not incur ROT on the rental of the room.

- If you charge for room rental and you provide or sell either non-alcoholic beverages such as coffee, tea, and soft drinks, and snacks such as cookies, popcorn, candy, doughnuts, fruits and raw vegetables, the true object is the rental of the room and no ROT is due on the room charge.

Note: You will still incur either ROT or use tax on the food and beverages provided based on how these items are contracted for (see Illinois regulation 86 Ill. Adm. Code 130.2145 (e) (1)).



EXAMPLE: A person contracts for the rental of a meeting room at a hotel for a business meeting. As part of the contract, the hotel agrees to provide coffee, tea, soft drinks and cookies at no extra charge to the participants of the meeting. The true object of this transaction is the rental of the room. The hotel does not incur ROT on the charges for the rental of the room. However, the hotel does incur use tax on its cost price of the food and beverages.

EXAMPLE: A person contracts for the rental of a meeting room at a hotel for a business luncheon. As part of the contract, the hotel agrees to provide coffee, tea, soda, soup, sandwiches and various desserts to the participants of the luncheon meeting. The true object of this transaction is deemed to be the sale of food and beverages and not the rental of the room. The hotel incurs ROT on its gross receipts, including the charges for the rental of the room.

EXAMPLE: A person contracts for the rental of a reception space at a local club for a graduation party. As part of the contract, the club will provide an employee to run the cash bar specifically for this event. The true object of the transaction is considered to be the providing of alcoholic beverages, so the club incurs ROT on the charges for the reception space.

EXAMPLE: A civic club contracts with a winery for a tour. The winery, for a separate charge under the contract, agrees to provide the club with a private room for two hours following the tour. Club members can leave the private room and walk to an adjoining public wine tasting area where they can purchase samples of various wines at an open bar. Club members then take the wine back to their private room. In this situation, charges for the rental of the private room are not subject to ROT because the winery has not provided either food or wine as part of the contract. The true object of this transaction is the rental of the private room. The contract is only for the tour and private room. The wine is purchased separately from the contract at an open bar accessible to all patrons of the winery.

EXAMPLE: A person contracts for the rental of a room at a winery for a wedding reception. As part of the contract, the winery will provide all the wine for the reception. The true object of the transaction is the provision of alcoholic beverages, so the winery incurs ROT on the charges for the room.

EXAMPLE: A person contracts with a hotel for a room for a cocktail reception. The hotel's rental contract requires that all alcoholic beverages and food be provided by a restaurant located on the hotel premises. The restaurant is a separate legal entity from the hotel. Because the hotel's rental contract **requires** the restaurant to provide the food and beverages, the hotel is considered to be the provider of the food and beverages. The true object of the transaction is the provision of food and beverages, and as a result, the hotel incurs ROT on the room charge.

Further guidance is available in **Illinois regulation 86 Ill. Adm. Code 130.2145 (e) - (f)**.

- ② Charges that are related to the provision of food or beverages are always part of the gross receipts from the sale of the food or beverages because those charges are part of a seller's costs of doing business and are not deductible from a seller's gross receipts. Examples of charges that are related to the provision of food and beverages include, but are not limited to, charges for food serving or carving and corkage, and charges for linens, chairs, tables, dishes, glassware, flowers and centerpieces. Examples of charges that are not related to the provision of food or beverages include, but are not limited to, charges for security, valet, coat check, entertainment, audiovisual and telecommunications services, and cancellation fees.

Background

The department found through audit that some vendors of meals (including hotels, wineries, and golf courses) were not correctly charging and remitting sales tax on the rental of the room when food and beverages were being provided.

For purposes of Retailers' Occupation Tax (ROT), the rental of space such as banquet, meeting, and conference rooms alone is not subject to the tax. However, when a room is rented in conjunction with the sale or provision of alcoholic beverages and/or food other than snacks, ROT is due on the gross receipts from the rentals, food, and beverage sales, whether stated separately or combined on the contract or billing.