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April 12, 2005

RECEIVED

APR 18 2005

D.E.C.

David Cowling, Esq.
Jones Day
2727 North Harwood Street
Dallas, Texas 75201-1515

Re: Request for Advisory Opinion concerning Nevada's Room Occupancy Taxes

Dear Mr. Cowling:

This advisory opinion letter responds to your letter dated December 3, 2004, wherein you have requested an advisory opinion concerning your client's obligations, if any, to collect and remit the room occupancy taxes described in chapters 244 and 268 of the Nevada Revised Statutes (NRS), and the various local ordinances adopted pursuant thereto. Please be advised that the opinions rendered below are based upon the particular factual circumstances that you have described in your letter of December 3, 2004. No reliance should be placed upon this advisory opinion letter with respect to transactions that differ materially from those described in your letter of December 3, 2004. In other words, any changes to the facts and circumstances as outlined in your letter may subject similar future transactions, or the businesses described therein, to a different tax treatment than expressed in this advisory opinion letter.

Additionally, please be advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules upon which this advisory opinion is based, may subject future transactions to a different tax treatment than is set forth in this advisory opinion letter. Finally, please be advised that we offer no opinion on any taxes or tax obligations other than those described in chapters 244 and 268 of NRS, and the various local ordinances adopted pursuant thereto (hereinafter the "Room Occupancy Taxes").

I. STATEMENT OF FACTS

Your client is a travel-related services company whom you refer to as an "Intermediary." According to your letter of December 3, 2004, the Intermediary operates no hotels, motels, time share units or similar temporary lodging facilities within the state of Nevada. The Intermediary will acquire, from the licensee or operator of a hotel or motel (hereinafter the "Hotel"), the right to book accommodations for a traveling customer. For providing this service, the Intermediary charges the customer a fee. The fee is added to the price of the accommodations and communicated to the customer as a lump sum charge for lodging accommodations. The customer pays the lump sum charge to the Intermediary, who in turn pays the Hotel for the price of the accommodations. The lump sum charge to the customer is more than the price that is paid by the Intermediary to the Hotel. The Intermediary does not

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typically inform the Hotel of the amount of its charge to the customer. The Hotel collects and remits the Room Occupancy Taxes based upon the amount paid by the Intermediary to the hotel operator. In addition to the lump sum charge that it communicates to the customer, the Intermediary itemizes a separate charge to the customer which it routinely characterizes as a tax recovery and service charge. The amount of the tax recovery and service charge does not necessarily correspond to the amount of the Room Occupancy Taxes that are actually reported and remitted by the Hotel.¹

In your letter, you have indicated that the Intermediary acquires no possessory interest in the accommodations, and thus acquires no right to sub-let or license the use or possession of the accommodations. With respect to its relationship with a Hotel operator, the Intermediary's role is limited to making room rate information applicable to a property available to prospective guests, capturing a potential guest's information and providing it to a Hotel operator, and facilitating a guest's payment to the Hotel operator for the provision of transient accommodations. If the Intermediary is unable to book accommodations by a specified point in time prior to the available date of the accommodations, the Intermediary will forfeit the right to book the accommodations. This right reverts to the Hotel operator.

II. ISSUES PRESENTED

You have asked us to confirm the following:

1. The Hotel licensee or operator or person providing transient lodging is required to pay Nevada Room Occupancy Taxes on the gross income or gross receipts that the Hotel licensee or operator or person providing transient lodging receives for renting rooms.
2. Taxable gross income or gross receipts that the Hotel licensee or operator receives for renting rooms do not include any facilitation fee or other service fee charged by an Intermediary to a person who has utilized the Intermediary's services to obtain a reservation at the Hotel because such fees (1) are not charged or received by the Hotel licensee or operator and (2) are not income or receipts for the use of a room in the Hotel.
3. Since an Intermediary is not a Hotel licensee or operator or a person providing transient lodging, an Intermediary has no duty to collect Nevada Room Occupancy Taxes.
4. Nevada Room Occupancy taxes do not apply to the facilitation fee or other service fees charged and retained by an Intermediary because such fees are neither (1) an amount received by the Hotel operator or licensee nor (2) income or receipts for the use of a room in the Hotel.

III. ANALYSIS

¹ As noted above, we offer no opinion on any matter other than the applicability and effect of the Room Occupancy Taxes. Accordingly, please take note that we offer no opinion as to whether the characterization of this charge as a "tax recovery" charge comports with applicable laws pertaining to consumer protection and/or deceptive trade practices. If the charge bears no relationship to an actual tax, one could argue that it is perhaps deceptive to characterize it as a "tax recovery" charge.

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We are of the opinion that the operator or licensee of the Hotel is the party responsible for reporting and remitting the Room Occupancy Taxes. In this regard, NRS 244.3352(1) indicates that the tax is imposed "upon all persons in the business of providing lodging." See also NRS 268.096(1). NRS 244.3352(3) further indicates that "[t]he person providing the transient lodging is liable. . . for the tax whether or not it is actually collected from the paying guest." See also NRS 268.096(3).

Rules of statutory construction require that a statute be interpreted according to its plain language. *Harris Associates v. Clark County School Dist.*, 119 Nev. 638 (2003). Here, the plain language of the applicable statutes purports to impose the liability for the Room Occupancy Taxes upon the person who operates the hotel, motel or other transient lodging facility in question. Furthermore, a tax statute must say what it means, and must not be extended by implication. *Department of Taxation v. Visual Communications, Inc.*, 108 Nev. 721, 725, 838 P.2d 1245 (1992)(citing *Cashman Photo v. Nevada Gaming Comm'n*, 91 Nev. 424, 538 P.2d 158 (1975)). Accordingly, it would be unreasonable to conclude that Nevada's Room Occupancy Taxes extend to parties other than those who are in the business of operating transient lodging facilities.

Based upon the representations in your letter of December 3, 2004, we are also of the opinion that the Intermediary has no statutory duty to collect and remit the Room Occupancy Taxes to which a Hotel operator or licensee is otherwise subject.² You have represented that the Intermediary acquires no possessory interest in lodging accommodations, and thus acquires no right to sub-let or license the use or possession of the accommodations. For purposes of this advisory opinion, we have assumed, and have not verified, that this is an accurate representation of the contractual arrangement between the Intermediary and the various Hotel operators and licensees with whom the Intermediary conducts business.

It follows, therefore, that the charge from the Intermediary to its customer would be appropriately characterized as a "service" or "facilitation" fee. As such, it would not constitute "gross receipts from the rental of transient lodging." See NRS 244.3352, NRS 268.096. Since the Room Occupancy Taxes are imposed upon the "gross receipts from the rental of transient lodging," they would not apply to these fees. See *id.* Accordingly, the measure of the Hotel operator's tax liability would be the amount paid by the Intermediary to the Hotel operator (and any other supplemental amounts paid directly by the customer to the Hotel operator). In our opinion, this sum would constitute the "gross receipts from the rental of transient lodging." The amount received by the Intermediary would not constitute receipts from the rental of transient lodging, but rather receipts from the provision of a travel-related service.

IV. OPINIONS

Based upon the foregoing authorities and factual representations, and subject to the assumptions and exceptions noted above, it is the opinion of the Department that:


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1. The Hotel operator or licensee is the party responsible for collecting and remitting Nevada's Room Occupancy Taxes;
2. The Intermediary neither operates a Hotel nor licenses Hotel accommodations, and therefore has no statutory obligation to collect and remit Nevada's Room Occupancy Taxes in connection with the provision of the travel-related services described in your letter of December 3, 2004;
3. The "service" and "facilitation" fees described in your letter of December 3, 2004, are not subject to Nevada's Room Occupancy Taxes;
4. The "service" and "facilitation" fees would not be included in the measure of the Hotel operator's liability for Nevada's Room Occupancy Taxes.

This advisory opinion letter is issued at your request for the exclusive use and benefit of the Intermediary, and its officers, employees, agents and representatives. The foregoing opinions pertain only to the transactions described in your letter of December 3, 2004, and no person, other than the Intermediary, should place any reliance upon this advisory opinion letter. The opinions expressed above are based upon the facts known to us, the documents examined by us and the law as the date hereof, and are rendered as of the date hereof. By issuing this advisory opinion letter we have not undertaken to determine, or to inform any person of any actions, events or changes in the law occurring after the date hereof which may affect the opinions expressed above. In accordance with NAC 360.200 (2), this opinion may be appealed to the Nevada Tax Commission. Thank you for your inquiry.

Sincere regards,

DEPARTMENT OF TAXATION

By: 
Charles E. Chinnock
Executive Director