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## State of Louisiana

DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
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October 22, 2018  
**OPINION 18-0098**

Ms. Arlene Gould  
Executive Director  
Natchitoches Parish Tourist Commission  
780 Front Street, Ste 100  
Natchitoches, Louisiana 71457

150 - TAXATION -Payment, release or compromise,  
refunding of recovery of paid; disposition & proceeds of  
special tax

La. R.S. 33 4574  
La. R.S. 33 4574.1.1

The \$9.95 "value added package" is considered taxable for purposes of the Natchitoches Parish Tourist Commission's hotel occupancy tax because the charge is mandatory for all guests staying at the hotel. In addition, the Natchitoches Parish Tourist Commission must attempt to recover any unpaid taxes unless the cost of recovery exceeds the value of the unpaid taxes.

Dear Ms. Gould:

On behalf of the Natchitoches Parish Tourist Commission, operating as the Natchitoches Convention and Visitors Bureau (the "Commission"), you have requested an opinion from this office regarding tax collections for a "value added package" charged to guests of a local hotel.

As background, a local hotel opened on November 18, 2016. This hotel has eighty-two (82) rooms available. The hotel charges \$9.95 per room, per night, as a "value added package." This mandatory charge includes breakfast, a fitness center, a business center, Wi-Fi, parking, and other amenities. The hotel has not been including this \$9.95 charge as taxable income.

In January of 2017, this matter was brought to the attention of the Natchitoches Parish Tax Commissioner (the "Commissioner"). On June 20, 2018, the Commissioner notified the Commission that he would be collecting taxes on the \$9.95 charge effective July 1, 2018.

Your request asks for an opinion on the following questions:

1. Is the mandatory charge of \$9.95 (i.e. the "value added package") taxable?
2. If so, should the hotel pay "back taxes" as a result of not reporting the \$9.95 charge as taxable for the period of November 18, 2016 to July 1, 2018?

We note at the outset that this opinion is limited to the issue of whether the \$9.95 charge is taxable under the hotel occupancy tax collected by the Commission. This opinion does not seek to opine on city, state, federal, or any other taxable issues with regard to the \$9.95 charge.

The Commission was created pursuant to La. R.S. 33:4574(B)(21) which provides for the creation of the Natchitoches Parish Tourist Commission as "a body politic and corporate and a political subdivision of the state of Louisiana," composed of the entire territory of Natchitoches Parish.<sup>1</sup> The Commission is authorized to collect a three percent (3%) hotel occupancy tax pursuant to La. R.S. 33:4574.1.1(A)(21).<sup>2</sup> The issue is whether the \$9.95 "value added package" is considered taxable for purposes of the hotel occupancy tax.

The Louisiana Third Circuit Court of Appeal has addressed this issue and concluded that yes, this "value added package" would be considered taxable as part of the hotel occupancy tax. In *S & R Hotels, L.L.C. v. Calcasieu Par. Sch. Bd. Sales & Use Tax Dep't*, the court determined that a \$7.50 charge for "breakfast, drinks, and coffee" was part of the charge relating to the "occupancy" of the room.<sup>3</sup> In *S & R Hotels, L.L.C.*, the hotel admitted that customers could only opt-out of the \$7.50 charge under very limited circumstances.<sup>4</sup> Thus, the court held that because this \$7.50 charge was in-fact a charge to occupy the room, it was to be included as taxable for purposes of the hotel occupancy tax.<sup>5</sup>

Here, the \$9.95 "value added package" is no different than the charge imposed in the *S&R Hotels, L.L.C.* case. Even though this charge appears to be for certain hotel amenities, it would be considered as a charge to occupy the room because it is mandatory. Therefore, this \$9.95 charge is taxable for the purposes of the Commission's hotel occupancy tax.

Since we have concluded that the \$9.95 is taxable, we next address the collection of "back taxes" for the period of November 18, 2016 to July 1, 2018. This office has previously opined on whether a political subdivision is obligated to pursue unpaid taxes.<sup>6</sup> In La. Atty. Gen. Op. No. 12-0169 we determined that a school board must attempt to recover unpaid taxes unless the cost of recovery exceeds the value of the unpaid taxes. Therefore, the Commission must attempt to recover the unpaid taxes on the \$9.95 charge for the period of November 18, 2016 to July 1, 2018 unless the cost of recovery exceeds the value of the unpaid taxes.

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<sup>1</sup> La. R.S. 33:4574(B)(21).

<sup>2</sup> La. R.S. 33:4574.1.1(A)(21).

<sup>3</sup> *S & R Hotels, L.L.C. v. Calcasieu Par. Sch. Bd. Sales & Use Tax Dep't*, 06-918 (La. App. 3 Cir. 12/13/06); 945 So. 2d 875, 877.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> La. Atty. Gen. Op. No. 12-0169.

Considering the foregoing, it is the opinion of this office that the \$9.95 "value added package" is considered taxable for purposes of the Natchitoches Parish Tourist Commission's hotel occupancy tax because the charge is mandatory for all guests staying at the hotel. In addition, the Natchitoches Parish Tourist Commission must attempt to recover any unpaid taxes unless the cost of recovery exceeds the value of the unpaid taxes.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JEFF LANDRY  
ATTORNEY GENERAL

BY:



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JL/CPC