

HTX - 2008 - 02
3-14-2008

STATEMENT OF AUDIT PROCEDURE

TREATMENT OF KITCHENETTES AS ROOMS

I. BACKGROUND

In *Parker Meridien Associates v. Grayson*, 159 A.D. 2d 394 (1st Dept. 1990) the Appellate Division of the New York Supreme Court unanimously affirmed the City's position that kitchenettes are taxable as rooms under the Hotel Room Occupancy Tax.

To give additional guidance as to how we will apply this decision, Finance amended §12-01 of the Hotel Room Occupancy Tax Rules to revise the room definition. The revised definition (see attached) specifies minimum standards for determining whether a kitchenette is a room subject to tax. It also provides three useful examples. This Statement of Audit Procedure informs auditors about the application of the revised definition of a room.

II. PROCEDURE

Auditors will apply the revised definition of a room to all tax periods on or after April 1, 1990, which are open for audit, unless they are instructed otherwise by a supervisor. In special cases or for further guidance in this area, a supervisor should be consulted.

Room. Any portion of a hotel whether used for dwelling, commercial or any other purpose, is a "room" under the law and these rules, except:

- (1) a bathroom or lavatory,
- (2) a place of assembly as defined in §27-232 of the Administrative Code of the City of New York (See: § 12-01 "place of assembly" of these rules),
- (3) a store, stand or counter to which access is had directly from public thoroughfares or street or mezzanine lobbies, and

(4) a lobby, public dining room or other public room when employed as such, provided, however, when such lobby, public dining room or other public room is used exclusively for a private purpose, the occupancy there of is subject to tax (unless the room qualifies as a place of assembly).

The term “room” shall include a kitchenette provided that is a walk-in area, enclosed by walls, with one or more doorways, archways or other openings, it is supplied with a cooking appliance including but not limited to a range, microwave or convection oven, or hot plate, and it contains at least one item from each of two of the following three categories.

(i) a sink with running water, or dishwasher;

(ii) a refrigerator;

(iii) a cabinet, counter top, or table.

Example:

A hotel suite contains a kitchenette with a microwave oven, refrigerator, sink, cabinets and counter top.

(a) The kitchenette is a walk-in area with three walls and a wide opening on the fourth side. The kitchenette is a room.

(b) The above items are all set into a wall and there is no appurtenant walk-in area. The kitchenette is not a room.

(c) Same facts as in (a) except the microwave is not in the kitchenette but rather is outside the kitchenette. The kitchenette is a room.