

06-2 November 30, 2006

FINANCE MEMORANDUM

Hotel Rewards Points Programs Under Hotel Occupancy Tax

This Finance Memorandum is intended to provide guidance to taxpayers and tax professionals in complying with the provisions of the New York City Hotel Room Occupancy Tax with respect to complimentary rooms and complimentary room upgrades provided by a hotel to members of rewards points programs as described below¹. It will apply to all open periods.

I. Background

Many hotel chains either run or participate in membership rewards programs. Hotel guests who join these programs are often able to redeem points earned for complimentary rooms or upgrades in New York City hotels. The points may have been earned by renting hotel rooms, either in New York City or elsewhere, or, for some programs, by purchasing other services or items, for example car rentals. Points may even be purchased using cash as part of some programs².

The New York City Hotel Room Occupancy Tax (the “Hotel Tax”) is imposed on the daily rent for every occupancy of a hotel room in the City of New York. Ad. Code §11-2502(a). Rent includes credits allowed by the operator to the occupant (see Ad. Code § 11-2501(7)); however, certain complimentary rooms are not subject to tax. 19 RCNY § 12-01. This Finance Memorandum sets forth the analysis of how these provisions apply to typical members rewards points programs.

II. Typical Rewards Points Programs

Hotel rewards points programs may be established and administered by hotel chains themselves, by related but separate companies, or by unrelated, independent companies that invite hotels to participate. Hotel guests are offered membership in these programs (“member guests”). One of the benefits of membership is the opportunity to earn points when staying at participating hotels.

¹This Finance Memorandum does not address the treatment of receipts from rewards points programs for purposes of New York City or New York State Sales Tax. Taxpayers should contact the New York State Department of Taxation and Finance for Sales Tax guidance.

²Under some programs, members may exchange rewards points for discounts on other merchandise or services. This Finance Memorandum does not address the redemption of points for products or services other than complimentary hotel rooms and room upgrades.

A member guest staying at a participating hotel in New York City earns points as part of the program. Although the hotel collects Hotel Tax on the full amount of the room rental at that time, a percentage of the room rate charged to the member guest is contributed to the rewards program. These contributions are generally kept in a central fund by the rewards program.

Ordinarily, when a member guest redeems points for a complimentary room or room upgrade, the hotel gets an offsetting credit against the hotel's monthly obligation to contribute to the fund. The credit is intended to help defray the expenses of the hotel involved in providing the complimentary room or upgrade to the member guest on behalf of the program. Examples of these expenses would be maid service, utilities, laundry, and personnel.

III. Hotel Tax Due

We have determined that Hotel Tax applies to rewards points programs in the following way:

- When a member guest receives a complimentary room upgrade, the hotel must collect Hotel Tax on the value of the original room, but not on the value of the upgrade.
- When a member guest redeems points for a room, the hotel is not required to collect Hotel Tax on the occupancy.

IV. Explanation

The Hotel Room Occupancy tax is a transactional tax imposed upon rent for particular occupancies of particular hotel rooms. The original payments for rooms rented in New York City by member guests earning points are taxed in full. The contributions to the central funds set up by the various rewards points programs, and the credits against those contributions, serve to redistribute money that was either actually subject to tax or would have been subject to tax if the occupancy had been in New York City. Accordingly, we will not tax redistributions by the fund to the hotels and will treat the rooms provided to member guests as complimentary.

NOTE: *Finance Memoranda are advisory and explanatory in nature. Finance Memoranda are not declaratory rulings or Rules of the Department of Finance and do not have legal force or effect, do not set precedent and are not binding on taxpayers.*