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STATEMENT OF AUDIT PROCEDURE

COMMERCIAL RENT TAX PROCEDURE FOR THEATRE PRODUCERS WHO HAVE ENTERED INTO “MODIFIED BOOKING CONTRACTS” WITH THEATRE OWNERS OR OPERATORS

I. BACKGROUND

The Department has recognized the unique relationship between theatre producers and theatre owners. This Statement of Audit Procedure explains the calculation of commercial rent tax liability for theatre producers.

II. HISTORICAL DEVELOPMENT

Traditionally, New York City producers and theatre owners do not sign a “four wall contract” that would entitle the producers to rent a building for a fixed fee. Instead, they sign a “booking contract” - - theatre owners provide services, personnel, know-how, and other support that would augment a show’s success, in exchange for a percentage of the box office receipts.

In response to such arrangements, the Department of Finance adopted a regulation, now contained in 19 RCNY Chapter 7, that provided in pertinent part:

Where a theatre owner and a theatrical producer enter into an agreement for the use of a certain theatre on the basis of what is commonly known as a “booking contract,” whereby the theatre owner agrees to furnish to the producer a lighted, heated and cleaned theatre, with the scenery and equipment contained therein, the necessary stage hands, carpenters, electricians, property men, janitors, ushers, ticket sellers, doorkeepers, house orchestra, etc. for a percentage of the box office receipts, that portion of the receipts paid by the producer to the theatre owner which is applicable to the use or occupancy of the theatre shall be deemed to be base rent and subject to the tax. In such case, the burden of establishing the amount of the receipts not applicable to the use or occupancy of the theatre shall be on the producer.

19 RCNY Section 7-01(6)(vii).

In 1964, the Department of Finance determined that under a “booking contract,” 23 percent of the theatre owner’s share of the receipts would be considered payment for the use of the premises (theatre) and the remaining 77 percent of the receipts would be considered payment for the other services. Accordingly, only 23 percent of the producer’s payments have been deemed to be gross rent subject to commercial rent tax.

Producers have since replaced most “booking contracts” with “modified booking contracts.” The exact terms of this latter type of contract vary from production to production. Under the modified booking contract, payments to theatre owners in general consist of (A) a predetermined percentage of box office receipts, (B) a flat monthly theatre rental payment (to cover the cost of certain theatre employees, utilities, insurance, security, maintenance, and administrative overhead), and (C) reimbursement for certain expenses (e.g., cost of employees who provide business services to the producer).

III. PROCEDURE

Twenty-three percent (23%) of all payments to the theatre owner or operator under “modified booking contracts” is deemed gross rent for the use or occupancy of the theatre and is subject to the New York City commercial rent or occupancy tax. Only reimbursements for certain petty cash expenses advanced by the theatre owner or operator on behalf of the theatre producers will be omitted from the calculation of gross rent.

The payments referred to in the preceding paragraph will include but not be limited to the following articles:

- Fixed Rental
- Theatre’s share of receipts
- Payroll, including payroll taxes, fringes and payroll preparation charges:
 - House Manager
 - Treasurers (Box Office Staff)
 - Ushers and Ticket Takers
 - Porters and Cleaners
 - House Stagehands*
 - Pit Musicians (if applicable)
 - Engineers (if applicable)
 - Security (If applicable)
 - Theatre Mail Order and Telephone Operators
- Theatre Administrative Charges
- Theatre Accounting Charges
- Real Estate Taxes
- Cleaning Charges and Supplies

- Cartage
- Utilities
- Share of Theatre's League Dues
- Armored Car Service
- House Equipment Rentals

- Other Theatre Operating Expenses, including but not limited to:
 - Art Conditioning
 - Exterminating
 - Sign Rental
 - Telesales Center

* Certain stagehands are paid by the producer and are not included. House stagehands are covered by a contract with Local 1, International Alliance of Theatrical Stage Employees. Stagehands paid by the producer are covered by a contract with the national union.

IV. CHANGE AFFECTING THE STATEMENT OF AUDIT PROCEDURE

If there is any substantial change in the booking arrangements between a theatre owner and a producer, the Audit Division will consider the effect of the change on the procedure outlined in part III, above.