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## STATEMENT OF AUDIT PROCEDURE

### AUDITS OF HOTEL TAX RETURNS – ROOM REMARKETERS

#### **BACKGROUND**

Local Law 43 of 2009 amended Chapter 25 of Title 11 of the NYC Administrative Code, which contains the provisions of law governing the Hotel Room Occupancy Tax (“Hotel Tax”). As of September 1, 2009, whenever a taxable occupancy is booked by an occupant through a room remarketer, the hotel operator and the room remarketer must each collect a portion of the hotel tax due. Any tax collected by a remarketer must be turned over to the New York City Department of Finance (“Finance”).

As a result of this requirement, it is possible that new and different issues may arise during the course of a hotel tax audit.

#### **SCOPE**

This Statement of Audit Procedure will give guidance to auditors reviewing and analyzing hotel tax returns filed by room remarketers.

#### **RELEVANT ISSUES AND PROCEDURES**

##### **1) Advance Payment of Hotel Tax by Remarketers**

Remarketers generally get paid when a customer reserves a room in advance of the actual occupancy. Remarketers will also collect the hotel tax at that point. However, the hotel tax is a tax upon the occupancy of hotel rooms in New York City, and is not due until the occupant has the “use or possession, or the right to the use or possession” of a room.

Because remarketers may have remitted the hotel tax in the quarter in which the tax was collected, remarketers may need to file refund applications to recover advance payments of hotel tax in the event the reservation is cancelled and the occupancy never takes place.

## **2) Cancellations and cancellation fees**

The current policy for hotel tax is that cancellation fees are not taxable, but guaranteed no-show payments are taxable because they still give a right to occupy the room. See SAP HTX 2008-01. This policy should also be followed for remarketers.

## **3) Discounts and Coupons**

Discounts, whether funded by the remarketer, the hotel, or shared between them, represent actual reductions to the price of a hotel room. The rent taxable under the hotel tax should also be reduced accordingly.

## **4) Records of Hotel Tax**

The hotel tax collected must be separated out in the remarketer's books and records using a reasonable method that allows auditors to verify that the net rent amounts and the additional rent amounts used were correct, and that the right amount of hotel tax has been collected.

## **5) Service Fees**

The definition of rent now includes "any service and/or booking fees that are a condition of occupancy". Section 11-2501(7).

Whether and when a "service fee" is a condition of occupancy will depend on the nature of the fee, i.e. whether it can be tied to a specific, identifiable service provided to a particular occupant other than merely facilitating the right to occupy a room, and on whether it occurs with every occupancy. Fees are presumed to be a condition of occupancy unless a remarketer can demonstrate otherwise to Finance.

Examples of taxable service fees:

Transaction fee: Standard \$7 fee charged to every customer that books a room or rooms.

Package fee: \$12 fee charged when a customer purchases a prepackaged trip that includes a hotel room and airfare (although only the portion of the fee attributable to the hotel room is taxable).

Possible examples of service fees that are not a condition of occupancy:

Agent assist fee: \$5 fee if occupant uses a live operator to book room. Not charged on every booking, and room can be booked without using the services of an operator, so not a condition of occupancy.

Customized Package fee: Remarketer researches hotels for a particular client as specific components of a "themed" package, and charges a fee for the time and effort involved in putting the package together according to a client's wishes.

## **6) Unbundling Packages**

When a remarketer has put together or purchased a package for resale and the remarketer knows the price of the components, a “cost of components” method should be used to determine what part of the package represents taxable additional rent. The taxable additional rent would be based on the ratio of the wholesale cost of the hotel room to the wholesale cost of all the components of the package multiplied by the total mark-up for the package.

However, many remarketers buy packages from other remarketers, who may have bought them from others, and so on. They frequently have no idea of the cost of some or all of the components. In that instance, a 15% markup on 70% of the average retail rate of a similar room may be used to compute additional rent.

## **7) Multiple Remarketer Transactions**

If a remarketer purchases rooms from a hotel and sells them to a second remarketer that then sells to the occupant, each remarketer is responsible for collecting hotel tax on its own markup, and the hotel is responsible for the hotel tax on the discounted rate it charges the (first) remarketer.

## **8) Promotions**

Remarketers do not have additional rent in each and every room transaction. Instead, their various promotional programs contemplate that they may give a room to an occupant for free, yet still pay the hotel at the usual discounted rate, or that they may sell a room to an occupant for less than the usual discounted rate. In either of these situations, the remarketer will generate a loss and no additional hotel tax will be collected and remitted by the remarketer.