

09-3 August 14, 2009

FINANCE MEMORANDUM**Tax on Hotel Room Occupancy Expanded to Include
Additional Rent Charged by Room Remarketers**

Caution: This Finance Memorandum applies to tax periods beginning from September 1, 2009 through tax periods ending on August 31, 2010 only. See Finance Memorandum 10-3rev for later periods.

Background:

Recently, the City of New York revised the Hotel Room Occupancy Tax (“Hotel Tax”) to ensure that the amount of tax charged for the occupancy of a particular hotel room stayed the same regardless of how that room was booked. Previously, a room booked directly with a hotel was subject to tax on the full amount charged by the hotel to the guest, yet when a guest booked the same room through an intermediary, the City would be paid tax only on the rate charged by the hotel to the intermediary rather than the full price charged to the guest. This recent legislation seeks to correct this anomaly by ensuring that the hotel tax is applied to the full room occupancy charge that a guest pays regardless of how the room is booked.

This Finance Memorandum explains how the Hotel Tax has been modified, outlines new definitions added to the law, and gives preliminary guidance to hotel operators and intermediaries about how to comply with their respective obligations. Finance will publish a more detailed Statement of Audit Procedure that gives guidance related to more specific business models, including guidance on unbundling packages.

Explanation:

Hotel Tax is imposed on the rent for occupancy of every hotel room in New York City unless the room is occupied by a permanent resident or the rent is otherwise excluded or exempted under the Administrative Code. Currently, hotel operators are required to collect and pay over Hotel Tax to the New York City Department of Finance (“Finance”).

Under the new legislation, rent for occupancy for a room booked or reserved by an intermediary, or **room re-marketer** as defined below, is the full amount that the occupant pays to occupy the hotel room. The hotel operator is responsible for collecting Hotel Tax for the amount it charges the room remarketer for the room, called the **net rent**. The room remarketer is now required to collect and remit Hotel Tax based upon the additional amount it charges the occupant, defined as **additional rent**. The net rent plus the additional rent

should in most cases comprise the total amount that the occupant paid to occupy the room.

The hotel operator and the room remarketer must each separately turn over the Hotel Tax collected to Finance. Record-keeping and registration requirements that apply to hotel operators now also apply to room remarketers.

New or Expanded Definitions:

- **"Rent."** The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, including any service and/or booking fees that are a condition of occupancy, and also any amount for which credit is allowed by the operator or room remarketer to the occupant, without any deduction whatsoever. §11-2501(7).
- The term rent does not include sales commissions paid by the hotel operator to a party such as a travel agent where the operator collects and remits tax on the full room rate paid by the occupant.
- **"Room remarketer."** Any person, excluding the operator, having any right, access, ability or authority, through any means whatsoever, to offer, reserve, book, arrange for, remarket, distribute, broker, resell, or facilitate the transfer of rooms the occupancy of which is subject to tax under this chapter.
- **"Net rent."** The rent received by an operator from a room remarketer.
- **"Additional rent."** The excess of the rent received from an occupant by a room remarketer over the net rent.

Compliance:

Effective date: The tax on net rent and additional rent will apply to hotel rooms in New York City **booked** on or after September 1, 2009, which is the effective date of the local law enacting these provisions.

- **Registration certificate:** Room remarketers offering hotel rooms in New York City on September 1, 2009 must complete and file a Certificate of Registration with Finance by September 3, 2009. Room remarketers that offer hotel rooms in New York City at a later time must register within three days from when they begin offering hotel rooms in New York City. Certificates of Registration are available on the Finance website at www.nyc.gov/finance.
- Finance will then send remarketers a Certificate of Authority to collect Hotel Tax on Finance's behalf. The certificate must be prominently displayed where occupants will see it. In the case of a room remarketer that offers New York City hotel rooms via the internet, the Certificate of Authority should be scanned and displayed on the room remarketer's web site.
- In addition, room remarketers must begin filing Hotel Tax returns in the same manner as hotel operators beginning with the tax quarter that start on September 1, 2009.