

**NEW YORK CITY TAX APPEALS TRIBUNAL
ADMINISTRATIVE LAW JUDGE DIVISION**

**In the Matter of the Petition
of
AMERICAN AIRLINES, INC.**

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DETERMINATION
TAT(H) 05-29(HO)

Hauben, D.C.A.L.J.:

Petitioner, American Airlines, Inc., filed a Petition with the New York City ("City") Tax Appeals Tribunal ("Tribunal") requesting the redetermination of a disallowance of a claim for refund of City Hotel Room Occupancy Tax ("HROT") for the period July 1, 2002 through June 30, 2003 (the "Tax Period").

Petitioner was represented by William Ault, Esq., and Jay Rosen, Esq., of Deloitte Tax, LLP. The Commissioner of Finance ("Respondent") was represented by Martin Nussbaum, Esq., Assistant Corporation Counsel, New York City Law Department. Frances J. Henn, Esq., Senior Counsel, New York City Law Department, participated in the brief.

A hearing was held on October 24, 2006 and May 14, 2007, at which time evidence was admitted and testimony taken. Petitioner and Respondent each submitted a brief and reply brief. The last brief was submitted on December 4, 2007.

ISSUES

I. Whether Petitioner's occupancy of a room or rooms in a hotel for at least 180 consecutive days entitled it to permanent

resident status with respect to all of the rooms it used in that hotel during such period.

II. Whether Petitioner qualified as a permanent resident with respect to rooms in a hotel by reason of its agreement with the hotel which set a guaranteed price for the use of a room, but did not specify the number of rooms to be used each day.

FINDINGS OF FACT

1. Petitioner is a commercial airline that operates regularly scheduled commercial flights into and out of the New York City area airports. When Petitioner's pilots and flight attendants had layovers between flights to and from the New York City Airports, Petitioner arranged and paid for their hotel accommodations in the City.

2. Petitioner entered into written letters of agreements with several hotels to provide hotel accommodations for Petitioner's pilots and flight attendants during the Tax Period.

3. Petitioner and Park Central Hotel ("Park Central"), located at 870 Seventh Avenue in Manhattan, entered into a letter of agreement (the "Park Central Agreement") for the period July 1, 2002 through July 30, 2003. The Park Central Agreement provided that Park Central would provide single room hotel accommodations for Petitioner's pilots and flight attendants at a fixed daily rate plus tax and a bellman gratuity charge.

4. Park Central was required to reserve rooms nightly based on Petitioner's "current requirements" with the understanding that the number of rooms might vary from month to month. Petitioner was required to notify Park Central of its updated "requirements on a monthly basis, approximately 10 days prior to the first day of each month." Park Central was required to provide additional rooms "as

needed, on a daily basis at the same rate, subject to availability."

The Park Central Agreement provided that individual room cancellations would be honored upon request and that Petitioner would not be billed for the second night in the event of a no-show.

Under the Park Central Agreement, both Petitioner and Park Central could terminate the agreement with or without cause on 60-days notice. Petitioner could terminate the agreement on 45 days notice with no liability if Petitioner "discontinues service into New York or for any other reason which would eliminate AMERICAN'S need for crew hotel accommodations" Petitioner also had the right to terminate the agreement on shorter notice or on no notice under certain circumstances. During the Tax Period, Petitioner used the Park Central for crew members of flights leaving New York City area airports who had layovers of greater than fourteen hours.

5. Petitioner and Radisson Hotel JFK Airport ("Radisson"), located at 135-30 140th Street, Jamaica, entered into a letter of agreement (the "Radisson Agreement"), for the period September 30, 2001 through September 29, 2003. The Radisson Agreement provided that Radisson would provide single room hotel accommodations for Petitioner's crew members at a fixed daily rate plus tax and a bellman gratuity charge.

6. Radisson was required to reserve rooms nightly based on Petitioner's "current requirements" with the understanding that the number of rooms might vary from month to month. Petitioner was required to notify Radisson of its updated "requirements on a monthly basis, approximately 10 days prior to the first day of each month." Radisson was required to provide additional rooms "as needed, on a daily basis at the same rate, subject to availability."

The Radisson Agreement provided that individual room cancellations would be honored upon notification and that Petitioner would not be billed for the second night in the event of a no-show.

Petitioner could terminate the Radisson Agreement with no liability if Petitioner "discontinues service into JFK International Airport or for any other reason which would eliminate AMERICAN'S need for crew hotel accommodations" Petitioner also had the right to terminate the agreement under certain other circumstances. During the Tax Period, Petitioner used the Radisson for crew members of flights leaving JFK International Airport who had layovers of fourteen hours or less.

7. Petitioner and Courtyard By Marriott at LaGuardia ("Marriott"), located at 90-10 Grand Central Parkway, East Elmhurst, New York, entered into letters of agreement dated October 5, 2001 and October 16, 2002 (the "Marriott Agreements"), for the period October 1, 2001 through December 31, 2004. The Marriott Agreements provided that Marriott would provide hotel accommodations for Petitioner's flight crew members at a fixed daily rate plus tax and a charge for baggage handling.

8. Marriott was required to reserve rooms nightly based on Petitioner's "current requirements" with the understanding that the number of rooms might vary from month to month to a maximum of 55 rooms per night. Marriott would provide additional rooms at its discretion.

The Marriott Agreements provided that individual room cancellations would be honored upon notification and that Petitioner would not be billed for the second night of a double overnight in the event of a no-show.

Petitioner could terminate the Marriott Agreements with no liability if Petitioner "discontinues service into LaGuardia for any reason which would eliminate AMERICAN'S need for crew accommodations . . ." Petitioner also had the right to terminate the agreement under certain other circumstances. Marriott was excused from performing under the agreements, without liability for consequential damages if it could not perform for any reason beyond its control. Under the Marriott Agreement dated October 5, 2001, Marriott could substitute rooms in other partnership hotels and could cancel the agreement on 30 days prior written notice. Under the Marriott Agreement dated October 16, 2002, Marriott could substitute rooms in other partnership hotels and could cancel the agreement on 60 days notice for nonpayment. During the Tax Period, Petitioner used the Marriott for crew members of flights leaving LaGuardia Airport who had layovers of fourteen hours or less.

9. Every month Petitioner submitted separate requirements reports to Park Central, Radisson and Marriott (the "Hotels") stating how many rooms it would need each night during the following calendar month. The rooms needed varied from night to night and from month to month. Petitioner also made requests for additional rooms as needed. Petitioner paid for the rooms that were requested and reserved whether or not they were used by a crew member.

10. Monica Chamberlain was Petitioner's Manager of Hotel Contracts during the Tax Period. As Manager of Hotel Contracts, Ms. Chamberlain and the staff she supervised were responsible for hotel accommodations and ground transportation for Petitioner's flight crews. Ms. Chamberlain managed the process to engage hotels to provide rooms for Petitioner's flight crews. Each year, Ms. Chamberlain and her staff negotiated or renegotiated over 100 agreements with hotels nationwide to provide rooms for flight crews.

11. Ms. Chamberlain testified both as a fact witness with respect to Petitioner's agreements and dealings with the hotels and as an expert witness with respect to industry practices in the hotel/airline accommodation industry.¹

12. Ms. Chamberlain testified that it was standard practice for airlines to enter into agreements with hotels for crew accommodations and that Petitioner's method of contracting for crew hotel accommodations was similar to the method used by other airlines. Ms. Chamberlain testified that at the time of contracting it is impossible to know how many rooms the airline will need each night during the period of the contract. During negotiations, Petitioner provided each hotel with information regarding Petitioner's use of hotel rooms during the prior twelve to twenty-four months.

13. Petitioner used at least one room in each of the Hotels every day for a period beginning at least 180 days prior to the start of the Tax Period and continuing throughout the Tax Period.

14. On August 13, 2003, Petitioner submitted a request for a refund of HROT to Respondent for the period July 1, 2002 through June 30, 2003 in the amount of \$221,359.65 (including \$77,358.87 for the \$2.00 per room tax plus \$144,000.78 for the 5% tax on Hotel charges).

15. On October 31, 2003, Respondent issued a Notice of Disallowance that denied Petitioner's request for refund.

16. Petitioner submitted documentary evidence and testimony regarding its procedures during the Tax Period for requesting and

¹ Respondent's motion to disallow Ms. Chamberlain from testifying as an expert was dismissed at the hearing.

paying for hotel rooms under the Agreements. Petitioner calculated its refund claim using invoices provided by the Hotels for billing purposes. The invoices were verified against the requirements reports for the billing period which reflected a continuous daily occupancy of rooms in the Hotels during each billing cycle.

17. Petitioner submitted documentary evidence and testimony at the hearing that supported the accuracy of the amount of the refund claimed by Petitioner and disallowed by Respondent. Respondent did not challenge the accuracy of Petitioner's computation of the refund claim.

STATEMENT OF POSITIONS

Petitioner contends that once it qualifies as a Permanent Resident because it occupies a room or rooms in a hotel for 180 consecutive days, it is exempt from HROT with respect to all occupancies in that hotel during the period it is a Permanent Resident in that hotel. Petitioner argues that the portions of Respondent's Regulations that are at odds with the statute's permanent resident exclusion are invalid. In the alternative, Petitioner contends that the letters of agreement with the Hotels are requirements contracts which gave it the right to occupy a hotel room and that alone is sufficient to qualify it as a Permanent Resident of the Hotels.

Respondent contends that the statute clearly grants permanent resident status on a room-by-room basis and that the Regulations limiting the permanent resident exception properly apply the statute. Respondent further contends that the letters of agreement do not alone qualify Petitioner as a Permanent Resident as they do not give Petitioner any rights to use or possess a hotel room or require Petitioner to pay consideration for the right to use a hotel room until Petitioner reserves a room or rooms.

CONCLUSIONS OF LAW

The Code imposes a tax on the transient use or occupancy of hotel rooms at a rate ranging from \$0.50 per day to \$2.00 per day, based on the amount of "the rent per day." The tax is imposed on "every occupancy of each room in a hotel" in the City. Code §11-2502.a(2). In addition, the City imposes a tax of five percent of the rent or charge per day "for every occupancy of each room in a hotel." Code §11-2502.a(3). The Code defines "Occupant" as "[a] person who, for a consideration, uses, possesses, or has the right to use or possess, any room or rooms in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise." Code §11-2501.3. "Person" includes a corporation. Code §11-2501.1. The Code defines "Occupancy" as "[t]he use or possession, or the right to the use or possession of any room or rooms in a hotel" Code §11-2501.4. "Room" is broadly defined but does not include a bathroom or lavatory or a place of assembly as defined in Code §27-232. The Code defines "Rent" as "[t]he consideration received for occupancy" Code §11-2501.7.

The HROT contains special provisions for long-term occupants of hotel rooms ("Permanent Residents"). The Code provides that "[a]ny occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days shall be considered a permanent resident with regard to the period of such occupancy." Code §11-2501.8. Code §11-2502.b(1) provides that "No tax shall be imposed hereunder upon a permanent resident." This is often referred to as the Permanent Resident Exclusion.² See, Finance Memorandum 08-1, Guidance for Businesses Subject to the New York City Tax on Hotel Occupancy, March 6, 2008.

² The parties have also referred to this provision as the permanent resident exemption and the permanent resident exception.

Respondent has promulgated regulations implementing and interpreting the above definitions. See, 19 RCNY §12-01. Rule §12-01(c) contains rules concerning Permanent Residents. Paragraph (2)³ provides that only continuous occupancy in a hotel is considered in determining Permanent Resident status. Upon completing 180 consecutive days of occupancy in a hotel, an occupant is entitled to a refund of HROT paid and is not liable for HROT as long as the occupancy continues uninterrupted. If there is a break in occupancy of even one day in the qualifying period, the occupant must start the 180-day qualifying period anew. A Permanent Resident who has any break in occupancy, loses permanent resident status and must qualify again with a new 180-day period of continuous occupancy. Only days in a particular hotel qualify. Thus, an occupant cannot count days in different hotels towards permanent resident status. However, a person need not occupy the same room or rooms in a particular hotel to qualify as a Permanent Resident.

The Rules further provide that: "[w]here a permanent resident rents additional rooms on a temporary basis, that person is not considered a permanent resident with respect to such additional rooms unless such rooms are occupied for 180 or more consecutive

³ 19 RCNY §12-01(c) contains two paragraphs designated (2). 19 RCNY §12-01(c), Permanent Resident.(2) provides in pertinent part:

A person is not a permanent resident as of a given date unless that person has completed 180 days of consecutive occupancy in the same establishment immediately prior to that date. . . . a person who, after having been a permanent resident, surrenders his occupancy and then subsequently resumes its occupancy, is not a permanent resident under the later occupancy until that person completes 180 additional consecutive days of occupancy. Where a person transfers from one hotel to another, even though owned or operated by the same operator, he is not a permanent resident of the latter establishment until [sic] has completed 180 consecutive days of occupancy therein. However, except as provided in subdivision (3) of this definition, a person who has completed 180 consecutive days of occupancy in different rooms of the same hotel is a permanent resident of that establishment. Where a person rents additional rooms on a temporary basis, that person is not considered a permanent resident with respect to such additional rooms unless such rooms are occupied for 180 or more consecutive days.

days." 19 RCNY §12-01(c), Rule 12-01(c), Permanent Resident, paragraph (2). Respondent applies the exemption from HROT with respect to businesses, such as Petitioner, based on the minimum number of rooms occupied for 180 or more consecutive days. Paragraph (3), concerning Permanent Resident contains the following illustration of the principle in 19 RCNY §12-01(c), Rule 12-01(c), Permanent Resident, paragraph (2):

Illustration (ii): An airline corporation rents three rooms on an annual basis from a hotel. However, on occasion, when it requires additional rooms in the hotel for the use of its employees, it rents such additional rooms on a daily basis for a period less than 180 consecutive days. The hotel is required to charge and collect the tax from the airline corporation on the airline's occupancy of the additional rooms.

Petitioner contends that once it qualifies as a Permanent Resident because it occupied a room or rooms in a hotel for 180 consecutive days, it is exempt from HROT with respect to all occupancies during the period of permanent residency. Petitioner asserts that to the extent the Rules provide otherwise, it contradicts the clear wording of a statutory provision and is invalid. *See, Kurcsics v. Merchants Mut. Ins. Co.*, 49 N.Y.2d 451, 459 (1980). As the clear wording of Code §11-2502(b) exempts permanent residents from HROT, Petitioner asserts that, in the Rules, Respondent has impermissibly converted an exemption based on personal status to an exemption based on use.

Respondent contends that the statute clearly grants permanent resident status on a room-by-room basis and that the Rules limiting the permanent resident exception properly apply the statute.

"Tax statutes of doubtful meaning are to be construed in favor of the taxpayer . . . [and] an administrative agency may not extend the meaning of statutory language to apply to situations not embraced within the statute." *Bloomingtondale Brothers v. Chu*, 70

N.Y.2d 218, 223 (1987). However, a provision granting an exemption must plainly appear and is to be narrowly applied. *Matter of Grace v. Tax Commission*, 37 N.Y.2d 193, 196 (1975).

Respondent argues that Code §11-2502(b)(1) is an exemption provision that must be narrowly construed against the taxpayer. Petitioner argues that it is an exclusion provision that must be strictly construed in its favor. *Good Humor Corp. v. McGoldrick*, 289 N.Y. 452 (1943); *Bloomington Bros.*, *supra*.

Code §11-2502(b)(1) does not indicate explicitly whether it is an exclusion or an exemption provision. However, Code §11-2502(c), (d) and (j) make it clear that the Legislature intended Code §11-2502(b)(1) as an exemption. Subdivision (j) provides, in pertinent part, that "[w]here an occupant claims **exemption** from the tax under the provisions of subdivision (c). . . ." [Emphasis supplied.] Subdivision (d)(2) provides, in pertinent part, "[w]here an occupant claims **exemption** from the tax under the provisions of paragraph one of this subdivision" [Emphasis supplied.] There is no reason to treat subdivision (b) in a manner different from subdivisions (c) and (d), which are exemption provisions as subdivisions (b), (c) and (d)(1) all begin by stating "[n]o tax shall be imposed hereunder upon." Since Code §11-2502(b) is an exemption provision, Petitioner must establish that it comes plainly within the provision. A reasonable interpretation of the provision by Respondent therefore will defeat the claim for exemption.

The purpose of the HROT statute is to raise revenue by taxing the transient occupancy of hotel rooms in the City. The purpose of the permanent resident exemption is to remove from the scope of the tax, persons whose occupancies are not transient. For purposes of the statute, occupancies of under 180 consecutive days are

transient and subject to the HROT, whereas longer occupancies are not.

The statute defines Occupant and Occupancy with reference to "any room or rooms." [Emphasis supplied.] Code §§11-2501.3 and 11-2501.4. Permanent Resident also is defined with reference to "any room or rooms."⁴ [Emphasis supplied.] Code §11-2501.8. These definitions provide a clear statutory and undisputed basis for the provision in 19 RCNY §12-01(c)(2) that a person does not have to occupy the same room in a hotel in order to qualify as a Permanent Resident. Petitioner argues that since, under the statute and Rules, an Occupant may use or possess any number or combination of different rooms to qualify as a Permanent Resident, and continues to qualify as a Permanent Resident so long as it uses or possesses any room or rooms in the hotel, Code §11-2501.8 cannot be read to limit Permanent Resident to the use or possession of a particular room or rooms.

The exemption from HROT provided to a Permanent Resident by Code §11-2502(b)(1) is broad. Qualification for permanent resident status may be based, under the statute, on the consecutive occupancy of different rooms. Once a person qualifies as a Permanent Resident under Code §11-2501.8 by occupying a room or

⁴ This statutory language comports with the enabling legislation contained in Chapters 161 and 162 of the Laws of 1970. The City implemented the enabling legislation in Local Law 15 (1970). The enabling legislation was amended by Chapter 253 of the Laws of 1980. The City implemented the amendments in Local Law 35 (1980). See, also, Uncons. Law §9441, (McKinney), NY CLS Unconsol ch 288-C, §1, (LEXIS through CH. 52, 3/26/2008). The enabling legislation as amended to increase the number of days required for permanent resident status to 180 days provides, in pertinent part:

Such tax shall not be applicable to a permanent resident of a hotel. For purposes of this section the term 'permanent resident' shall mean a person occupying any room or rooms in a hotel for at least one hundred eighty consecutive days.

Compare Chapter 252 of the Laws of 1980 and Section 1107 of the Tax Law which define permanent resident for sales tax purposes in language identical to Code §11-2501.8.

occupying different rooms in a hotel for 180 consecutive days, that person is "considered a permanent resident with regard to the period of such occupancy." Once permanent resident status is established, the Permanent Resident is exempt from HROT under Code §11-2502(b) (1).

Respondent's Rules, without the last sentence of paragraph (2) and Illustration (ii), support the conclusion that Permanent Resident status is on a hotel-wide basis. Indeed, paragraph (2) begins with a reference to "180 days of continuous occupancy in the same establishment." The final sentence of that paragraph, which limits permanent resident status according to the minimum number of rooms occupied for at least 180 consecutive days is not supported by any language in the statute. As Petitioner points out, the last sentence is inconsistent with the statutory and regulatory allowance of the occupancy of different rooms in qualifying for permanent resident status.

Respondent's interpretation of the exemption requires a finding that the definition of Permanent Resident implicitly applies on a room-by-room basis, thus reading into the Code a limitation that is not there. There is no sound reason to read such a limitation into the statute. See, *American Cyanamid Co. v. Public Service Comm.*, 88 A.D.2d 1063, 1064 (3rd Dept. 1982); *New York Life Ins. Co. v. State Tax Comm.*, 80 A.D.2d 675, 676 (3rd Dept. 1981), *aff'd*, *Metropolitan Life Ins. Co. v. State Tax Comm.*, 55 N.Y.2d. 758 (1981). Had Respondent interpreted the term "rooms" restrictively in the Rules to require the occupancy of the same group of rooms for 180 consecutive days to be an Occupant with respect to those rooms, its interpretation of Permanent Resident may have been reasonable. However, Respondent properly has not interpreted "rooms" restrictively.

Respondent, by the last sentence of paragraph (2), allows a person to be a Permanent Resident only as to the minimum number of

rooms occupied continuously during a 180-day period, but does not allow that person to be a Permanent Resident with respect to other rooms occupied during that period. This interpretation requires the denial of Permanent Resident status, in part, during Petitioner's period of continuous occupancy as a Permanent Resident. The Code, however, provides explicitly that no tax shall be imposed on a Permanent Resident, without any qualification. Code §11-2502(b) (1). Respondent asserts that in the last clause of Code §11-2501.8 which reads "with regard to the period of such occupancy," the words "such occupancy" must be read as referring only to the "room or rooms occupied for 180 or more days." The purpose of this clause, however, merely is to clarify that permanent resident status begins on the first day of the qualifying period and not the 180th day, thus allowing Respondent to issue refunds. The word "period" is the subject of this clause. Code §11-2501.8 does not limit "the period" of occupancy to only the room or rooms occupied for such 180-day period; does not authorize a tracing of rooms; and does not contain a limitation on the number of rooms as to which a person may be a Permanent Resident. Moreover, even if this clause did so, it is a clause only found in the enabling legislation for the sales tax and does not appear to be in the enabling legislation for the HROT.⁵ Respondent's interpretation does not provide a reasonable basis for limiting the permanent resident exemption in the Rules.

Petitioner's interpretation of the statute conforms literally to the mandate of Code §11-2502(b) (1) that no HROT shall be imposed on a Permanent Resident. Petitioner's interpretation also conforms literally to Code §11-2501.8, as Petitioner was a person that used

⁵ Compare Section 1107 of the Tax Law and Chapter 252 of the Laws of 1980, concerning sales tax, with Chapters 161 and 162 of the Laws of 1970 and Chapter 253 of the Laws of 1980, concerning hotel room occupancy tax. See, also, Unconsol. Law §9441 (McKinney), NY CLS Unconsol Ch 288-C, §1 (LEXIS through CH. 52, 3/26/2008).

rooms in a hotel for at least 180 consecutive days and its request for a refund is "with regard to the period of such occupancy."

Revenue legislation should be reasonably construed so that the underlying purpose is not destroyed. The literal interpretation of the statute, however, does not lead to an absurd result. Where the statute is clear and unambiguous, and serves its intended purpose, its terms should be given effect. Unsought consequences, if there are any, are for the legislature to address. *Raritan Dev. Corp. v. Silva*, 91 N.Y.2d 98, 107 (1997). Here, the literal interpretation of the statute carries out the statute's purpose to tax only transient occupancies. During the Tax Period, Petitioner occupied many rooms in the Hotels each night. Petitioner was not a transient. Occupants such as Petitioner were clearly intended recipients of the permanent resident exemption. If the legislature had intended to limit the scope of Permanent Resident and the exemption as Respondent has done in its Rules, it could have easily expressed such intent in clear language and likely would have used express language to achieve that end had it desired to do so.

As the qualification for and continuation of permanent resident status is based on the continuous occupancy of any combination of rooms in a hotel, the exemption applies to the person, as plainly expressed in the enabling legislation and the Code, and thus is not limited to the minimum number of rooms continuously used. Accordingly, the exemption does not apply on a room-by-room basis. The last sentence of paragraph (2) and Illustration (ii) of paragraph (3) of 19 RCNY §12-01(c), concerning Permanent Resident, therefore, are not in conformance with the Code and are invalid.

Petitioner argued, in the alternative, that if Respondent's Rules properly interpreted Code §11-2502(b)(1), it was still entitled to refunds because the Agreements gave Petitioner the status of a Permanent Resident with respect to all rooms occupied

and paid for in the Hotels. I will briefly address this contention for completeness.

Permanent Resident is defined in Code §11-2501.8 as "any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days." Occupant is "any person who, *for a consideration*, uses or possesses, or has a *right to use or possess* any room or rooms in a hotel" [Emphasis supplied.] Petitioner asserted that the Agreements gave it the right to occupy a room or rooms in a hotel for at least 180 consecutive days and that it paid consideration for this right.

Any determination of permanent resident status must take into account the rooms actually paid for under the Agreements. Only the rooms for which Petitioner was obligated to pay qualify as an "Occupancy" subject to the HROT. Under the Agreements, Petitioner became obligated to pay for a room, for purposes of the Code, only when it notified the Hotels of its room requirements each month and the rooms were reserved. As reflected in the record, those are the rooms which Petitioner actually paid for and were not available to be occupied by others. The Agreements alone did not provide Petitioner with a right to the use of a room as contemplated in the Code unless the room was paid for. The Agreements are not analogous, under the Code, to a contract for a fixed number of rooms for a period of time. The potential damages that Petitioner might have to pay a hotel for "breaking" a letter of agreement is not consideration for the right to use a room. Also, the Park Central Agreement and the October 5, 2001 Marriott Agreement could be cancelled by the hotel without cause, and Marriott could substitute rooms in partnership hotels during the Tax Period. Moreover, under Petitioner's theory, a person with such an agreement could be liable for HROT on the maximum number of rooms that might be used each night during the agreement period. The Agreements that give Petitioner the right to reserve varying numbers of rooms each month based on its history of hotel room

occupancy at a set price per room are insufficient alone to qualify Petitioner as a Permanent Resident.

ACCORDINGLY, IT IS CONCLUDED THAT a person who occupies a room or rooms in a hotel for at least 180 consecutive days is a Permanent Resident of that hotel. Upon qualifying as a Permanent Resident, that person is exempt from HROT beginning with the first day of the 180-day period and is no longer subject to HROT with respect to any occupancy in that hotel while it qualifies as a Permanent Resident. Thus, the last sentence of paragraph (2) and Illustration (ii) in paragraph (3) of Rule §12-01(c), concerning Permanent Resident, are invalid as they conflict with the plain language of Code §§11-2501.8 and 11-2502(b)(1).

As Petitioner was a Permanent Resident of each of the Hotels it was exempt from HROT during the Tax Period. Therefore, the Petition of American Airlines is granted and the refund of HROT requested for the period July 1, 2002 to June 30, 2003, in the amount of \$221,359.65, is granted.

DATED: May 29, 2008
New York, New York

Warren P. Hauben
Deputy Chief Administrative Law Judge