

Fee on Hotel Occupancy in New York City

Governor George E. Pataki recently signed into law Chapter 3 of the Laws of 2004. This memorandum describes the amendments to the Tax Law made by this chapter. The amendments impose a fee on hotel occupancy in New York City (hotel unit fee).

Imposition of a \$1.50 per unit fee within New York City

Beginning on or after April 1, 2005, a hotel unit fee in the amount of \$1.50 per unit per day is imposed on every occupancy of a unit in a hotel located within New York City (Bronx, Kings, New York, Queens and Richmond counties). This fee is in addition to the state and local sales tax on the rent from hotel occupancy imposed by and pursuant to the authority of Articles 28 and 29 of the Tax Law and to the tax on occupancy of hotel rooms imposed by section 11-2502 of the Administrative Code for the City of New York which is administered by the New York City Department of Finance. Like the state and local sales tax imposed on the rent from hotel occupancy, this hotel unit fee is **not** imposed upon occupancy (1) by a permanent resident, (2) where the rent per unit is \$2 per day or less, or (3) where the rent from occupancy is otherwise exempt or excluded from sales tax under the Tax Law, as in the case of occupancy by an exempt organization.

The hotel unit fee will be imposed on occupancies occurring on or after April 1, 2005, regardless of whether the occupancy is pursuant to a prior contract, lease, or other arrangement. Also, regardless of whether the rent for occupancy is paid on a weekly, monthly, or other basis, the occupancy is subject to the hotel unit fee to the extent that the occupancy occurs on or after April 1, 2005. In addition, any occupancy of a unit for less than a full day on or after April 1, 2005, is subject to the \$1.50 hotel unit fee; there is no proration of the unit fee for less than a full day of occupancy.

(Tax Law sections 1104(a),(c))

Hotel unit fee administered and enforced in same manner as sales tax on rent received from hotel occupancy

The amendments provide that the hotel unit fee is to be administered and collected in the same manner as the state and local sales tax on the rent received from hotel occupancy imposed under section 1105(e) of the Tax Law (the state and local sales tax on hotel rent). Therefore, all provisions in the Tax Law (except sections 1107, 1108, and 1109), including the definitions and exemptions, relating to or applicable to the administration, collection, and disposition of the state and local sales tax on hotel rent apply to the hotel unit fee, with modifications that may be necessary in order to adapt the language to the hotel unit fee.

Hotel operators are required to collect the hotel unit fee from occupants and pay the unit fee collected in the same manner in which they remit the state and local sales tax on hotel rent. The Tax Department has added a line to its sales tax returns to allow New York City hotel

operators to report the number of occupancies subject to the hotel unit fee and remit the amount of unit fee collected.

(Tax Law section 1104(b))

Definition of *unit in a hotel*

For the purpose of the hotel unit fee, the phrase *unit in a hotel* means any room(s) of any kind in any part or portion of a hotel that is available to be let out for any purpose other than a place of assembly. A set of rooms generally rented out as a suite is considered to be a *unit in a hotel* for purposes of the hotel unit fee. In addition, a *unit in a hotel* may include two or more contiguous rooms or units in a hotel that are otherwise normally rentable by the hotel as separate rooms or units, where (1) the units provide access to each other through doorways within the rooms or units; (2) the units are rented to the same occupant(s) at the same time and are billed as a single unit to the occupant(s); and (3) there is an intent by the occupant(s) to use the otherwise separate rooms or units as a single unit. Such an intent may be shown by language in the lodging agreement indicating that the otherwise separate rooms or units are to be used as a single unit.

Definition of *permanent resident* and related refund procedure

As previously indicated in this memorandum, the occupancy of a *permanent resident* is excluded from the imposition of the hotel unit fee. For purposes of the hotel unit fee, the phrase *permanent resident* as defined in section 1101(c)(5) of the Tax Law applies. Therefore, *permanent resident* means any occupant of any room or rooms in a hotel for at least 90 consecutive days.

Like the state and local sales tax on hotel rent, the hotel operator must collect the hotel unit fee on every occupancy of a unit in a hotel regardless of whether the unit is rented under a contract which provides that the occupant will have the right to occupy a unit for 90 consecutive days or more. As with the state and local sales tax on hotel rent (other than New York City's sales tax on hotel rent), when an occupant reaches 90 consecutive days of occupancy in the unit, the hotel unit fee paid with respect to the 90 days are refundable to the occupant. In this case, the hotel operator may refund to the occupant the total amount of the hotel unit fee previously paid and then take a credit on its sales tax return in an amount equal to the fee that was refunded. If the hotel operator does not refund the hotel unit fee to the occupant, the occupant may file a claim for refund directly with the Tax Department using Form AU-11, *Application for Credit or Refund of Sales or Use Tax*.

Termination of the hotel unit fee

The amendments relating to the imposition of the hotel unit fee also provide that the imposition of the fee will terminate after all bonds secured in whole or in part by the fee have been fully paid, discharged, or have been deemed to be paid, together with interest thereon and interest on unpaid installments of interest.

(See Tax Law section 1104)