



2012 Budget Legislation Affecting the Sales Tax Obligations of Hotel Room Remarketers

This memorandum explains recently enacted legislation that changes certain procedural requirements to make it easier for hotel room remarketers to meet their sales tax obligations.

Background

Recent amendments to the Tax Law enacted as part of the 2012-2013 budget legislation (Chapter 59 of the Laws of 2012) change certain procedural requirements for hotel room remarketers. These changes are designed to make it easier for room remarketers to comply with their responsibilities under the sales tax laws. The new law amends legislation enacted in 2010 (Chapter 57 of the Laws of 2010) that requires room remarketers to collect and remit sales tax on their sales of hotel occupancy in New York State. For more information about this prior legislation, see TSB-M-10(10)S, *Amendments Affecting the Application of Sales Tax to Rent Received for Hotel Occupancy by Room Remarketers*.

The following is a description of the amendments enacted by the new law.

Bundled sales

In the case of sales of hotel occupancy together with other items for a single price (bundled sales), the new law provides room remarketers a method to compute the amount that is subject to sales tax as rent for hotel room occupancy. Under this new method, the portion of the charge that is taxable as rent is based on the price that the remarketer paid for the occupancy relative to the price paid for the other components of the bundle. In addition, room remarketers who use this method do not have to separately state the rent portion of the bundled price on the receipt given to the customer, as normally required under section 1105(e)(2) of the Tax Law.

Specifically, the rent portion of a bundled sale is computed as follows:

- The total amount charged for the bundle is multiplied by a fraction. The numerator of the fraction is the amount payable for the occupancy by the room remarketer. The denominator is the amount payable by the room remarketer for all the items being sold in the bundle.

The legislation also provides that any other method that has been authorized and approved in advance by the Department of Taxation and Finance is acceptable.

The new law also provides that when using the methods described above, the room remarketer must:

- separately state the sales tax on the rent for occupancy on the receipt given to the customer; and
- maintain records of the prices paid for all the components included in the bundled sale, and make the records available for review by the Tax Department on request.

If the room remarketer fails to separately state the sales tax or maintain records as described above, the total charge for the bundled sale will be treated as rent subject to sales tax.

Note: Section 11-2502(a)(4) of the Administrative Code of the City of New York was also amended to provide a similar change to the New York City Hotel Room Occupancy Tax.

The customer's receipt

Previously, room remarketers were required to provide to the customer the receipt that separately states the sales tax due from the customer at the time the sale occurred, which is usually when the customer makes the reservation and pays the remarketer. The new law now permits room remarketers to provide the customer with this receipt on or before the completion of the occupancy. The new law also provides that the room remarketer must keep a true copy of the receipt or maintain electronic records that accurately reflect the information on the receipt, including the date the receipt was issued and how it was issued.

Note: Section 11-2502(f) of the Administrative Code of the City of New York was also amended to provide a similar change to the New York City Hotel Room Occupancy Tax.

Reporting and paying sales tax due

Room remarketers must now report and pay sales tax due on occupancies on the sales tax return that is due for the filing period in which the occupancy ends. Prior to this change, room remarketers were required to report and pay the sales tax due on the sales tax return filed for the sales tax period during which they collected the consideration for the sale.

Information required to be obtained by the room remarketer

Previously, in order to receive a refund of the sales tax paid to an operator of a hotel, room remarketers had to obtain the certificate of authority number of the operator of the hotel. Under the new law, if the room remarketer is unable to obtain the hotel operator's certificate of authority number, the room remarketer may alternatively provide the hotel operator's name, business address, telephone number, and the address of the hotel where the occupancy took place.

Effective date

The amendments described in this memorandum take effect on September 1, 2012, and apply to occupancies that begin on or after that date.

(Tax Law sections 1111(r), 1119(e), Administrative Code of the City of New York sections 11-2502(a)(4), 11-2502(a)(5) and 11-2502(f))

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