



Advisory Opinion: TSB-A-24(50)S

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether he must collect sales tax on rent from his vacation property.

We conclude that the rent from Petitioner’s vacation property is not subject to sales tax.

Facts

Petitioner rents out his owner-occupied single-family house as a vacation rental to intermittent guests that stay for a minimum of two nights. Petitioner does not provide food, beverage or other services in connection with the rental. The house is cleaned in between guests, but there is no daily cleaning or linen service. Petitioner rents out three different suites, and sometimes the entire house, to guests. Petitioner occupies the master suite when no guests are booked.

Analysis

Generally, sales tax is imposed on the rent for every occupancy of a room or rooms in a hotel. See Tax Law § 1105(e)(1). A “hotel” is “a building, or portion of it, that is regularly used and kept open for the lodging of guests.” See Tax Law § 1101(c)(1).

The term hotel includes, but is not limited to, an apartment hotel, a motel, bungalow or cottage colony, boarding house, or club, whether or not meals are served. A building, or portion of the building, falls within this definition if, among other factors:

- (i) sleeping accommodations are provided for the lodging of paying occupants on a regular basis;
- (ii) typical occupants are transients or travelers;
- (iii) housekeeping, linen, or other customary hotel services are provided for occupants; and
- (iv) the relationship between the operator of the establishment and the occupant is that of an innkeeper and guest, not that of a landlord and tenant (e.g., the occupant does not have an exclusive right or privilege with respect to any particular room or rooms, but instead merely has an agreement for the use or possession of the room or rooms).

See 20 NYCRR 527.9(b); See *also* Publication 848 – *A Guide to Sales Tax for Hotel and Motel Operators* (2/15); TSB-A-04(7)S; TSB-A-15(11)S; and TSB-A-15(38)S.

Petitioner does not provide housekeeping, linen services or other services during a guest stay in connection with the rental of the vacation rental. Because Petitioner does not provide housekeeping,

linen or other customary hotel services, the vacation rental does not qualify as a hotel for purposes of the State and local sales taxes administered by the Department. Therefore, the rent from the vacation property is not subject to sales tax.

This Advisory Opinion does not address any hotel occupancy tax imposed and administered by a local government.

DATED: October 18, 2024

/s/

MARY ELLEN LADOUCEUR
Principal Attorney

Note: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.