

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82(33)S
Sales Tax
September 7, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820118A

On January 18, 1982, a Petition for Advisory Opinion was received from Kathleen B. Dexter/A Reasonable Alternative, Inc., 117 Spring Street, Port Jefferson, New York 11777.

The issue raised is whether or not a "bed and breakfast" booking agency is required to collect sales tax on its charges.

Petitioner operates a service whereby persons seeking accommodations are placed in the homes of "hosts" who have contracted with Petitioner for this purpose. "Hosts" are people who enter into an agreement whereby Petitioner arranges for guests to use their spare rooms for transient lodging. Hosts are not required to accept a guest at any time that is inconvenient for them, nor are they under any obligation to have rooms available for specific times or periods. During the past year a large majority of hosts had five or fewer bookings, for time periods totaling less than three weeks.

Under the terms of the agreements between Petitioner and approximately 50 hosts, all receipts collected from the guests are submitted to Petitioner, which then remits 75% of such receipts to the hosts as a commission. In addition, the hosts are required to pay Petitioner a yearly registration fee of \$50.00.

Section 1105(e) of the Tax Law imposes a tax on "the rent for every occupancy of a room or rooms in a hotel in this state, except that the tax shall not be imposed upon (1) a permanent resident, or (2) where the rent is not more than at the rate of two dollars per day."

Section 1101(c)(1) of the Tax Law defines the term "hotel" as follows:

"A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term 'hotel' includes an apartment hotel, a motel, boarding house or club, whether or not meals are served."

Section 527.9(b)(1) of the Sales and Use Tax Regulations defines the term "hotel" as follows:

"A building or portion of it, which is regularly used and kept open for the lodging of guests. 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"

Petitioner and approximately fifty hosts have entered into agreements under which Petitioner, on a regular basis, offers rooms to the public for the lodging of guests. While an individual who rented out a room in his residence to a transient guest on a casual basis would not, in the absence of any other activity, be considered to be operating a hotel within the meaning of section 1101(c)(1) of

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the Tax Law, Petitioner, by entering into a number of host contracts, and holding itself out as having lodging available to the public, is engaged in the business of operating what is in effect a hotel, albeit comprised of the premises of various hosts. As the Petitioner receives all the receipts, Petitioner is required to register with the Tax Commission as a vendor and to collect the State and applicable local sales tax on its receipts.

DATED: August 20, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau