

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

TSB-A-97(58)S  
Sales Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970513B

On May 13, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from KPMG Peat Marwick, LLP, 100 North Tampa Street, Suite 2400, Tampa, Florida 33602.

The issue raised by Petitioner is whether the charges to its client for hotel booking fees are subject to New York State sales tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner's client, domiciled outside the United States, does business as a travel agent. Often, Petitioner's client sells "tour packages" to foreign citizens vacationing in New York. The tour packages provide Petitioner's client's customers, under one lump sum charged, with airline tickets, hotel accommodations, bus service, and other miscellaneous additional items commonly included in a vacation package.

To provide better service to its customers, a large hotel located in New York (the "Hotel") recently established a separate legal entity that operates as a booking agent for the Hotel. The booking agent maintains books and records with respect to its own activities separate and apart from the Hotel's books and records. This booking agent assists Petitioner's client by providing information on available room rental discounts that arise either from renting a large number of rooms (quantity discounts) or from renting the rooms during off-peak times of the year. Ordinarily, the booking agent negotiates a "package deal" at a reduced rental rate, thus saving Petitioner's client money. The booking fee charged by the booking agent is usually about 20 percent of the amount charged by the Hotel for the room rental and in no circumstances is the booking fee greater than 25 percent charged by the Hotel for room rental. In addition to providing a booking service for the Hotel, the booking agent also provides travel brochures and travel guides highlighting areas of interest in the immediate vicinity. These travel brochures and guides are provided to the travel agent at no charge.

The following scenario is representative of the aforementioned transaction when Petitioner's client (on behalf of its customers) rents hotel rooms from the Hotel and the transaction is negotiated by the booking agent:

After the booking agent negotiates a price per room on behalf of the Hotel with Petitioner's client, Petitioner's client rents rooms from the Hotel for \$80 per room plus applicable tax that is invoiced by and paid directly to the Hotel by Petitioner's client. The booking agent then separately invoices Petitioner's client an additional \$20 per room for booking services charged for negotiating the transaction.

The booking service is a valuable service that is performed by the booking agent for Petitioner's client and the Hotel in that Petitioner's client is able to obtain reduced rates and the Hotel is able to achieve a higher occupancy rate. This fee is not a mandatory fee required by the Hotel. Petitioner's client can avoid this fee by choosing not to use the booking agent to negotiate room rentals. However, the total combined amount charged by the Hotel and the booking agent, upon utilizing the booking agent's services to negotiate the transaction, is usually less than the normal room rate charged by the Hotel.

Applicable Law and Authority

Section 1105(e) of the Tax Law imposes sales 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)(6) of the Tax Law defines "rent" as "the consideration received for occupancy valued in money, whether received in money or otherwise."

Technical Services Bureau Memorandum, TSB-M-92(7)S, dated December 7, 1992, entitled Providers of Bed and Breakfast Services Required to Collect Sales Tax provides, in part:

A bed and breakfast facility or guest house . . . is similar to a hotel or motel, and the host of such an operation is therefore considered to be providing a hotel or motel service. Accordingly, any charge made by or on behalf of the host for occupancy in such a facility is subject to sales tax.

\* \* \*

A bed and breakfast registry is a type of referral agency . . . Persons interested in staying in such places contact the registry, and the registry, in turn, puts the two parties together for a fee or commission.

\* \* \*

It should be noted that in all instances where a fee, commission, service charge, etc., is added to the bill for occupancy, by or on behalf of a bed & breakfast registry or similar agency, such charge must be included in the amount of the taxable receipt even if this fee is separately stated from the amount of the room charge. (Emphasis added)

EXAMPLE (6)

Suppose the receipt . . . was written as follows:

2 nights stay	\$155.00
Registry fee	15.00
Sales tax 7%	<u>11.90</u>
Total amount due	\$181.90

The sales tax must be calculated upon the total amount of the charge to the customer regardless of whether the registry fee is separately stated from the room charge.

Opinion

In its business as a travel agent, Petitioner's client may utilize the services of a booking agent to negotiate reduced rate room rentals at a large hotel located in New York State. The booking agent was created by the hotel to operate on behalf of the hotel. Petitioner's client enlists the services of the booking agent to negotiate a price per room for Petitioner's client's customers. Petitioner's client then includes the room rentals as part of the vacation packages it sells to its customers. In operating on behalf of the hotel, the booking agent is holding itself out as having rooms available for the lodging of guests, and Petitioner's client is considered to be contracting for occupancy through the booking agency (see TSB-M-92(7)S, supra).

In addition to the hotel room charge billed by the hotel, Petitioner's client is charged and billed separately a 20-25 percent fee by the booking agent for its service. A room in the hotel cannot be rented through the booking agent unless the occupant (i.e., the purchaser of the package) pays the booking agent fee. Rent subject to tax is the consideration received for occupancy whether valued in money or otherwise (Tax Law, Section 1101(c)(6)). The entire occupancy charge to Petitioner's client in this case consists of the booking agency fee and the hotel's room charge (see Bed & Breakfast U.S.A., LTD, Adv Op Comm T&F, August 31, 1987, TSB-A-87(29)S; TSB-M-92(7)S, supra). The room cannot be charged unless both charges are paid. The fact that these charges are separately invoiced and billed to Petitioner's client is immaterial; the fee required by

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the booking agency is part of the occupancy charge. Accordingly, in those instances where a fee, commission or service charge is part of the charge for occupancy, the total amount upon which Petitioner's client must pay sales tax includes both the room charge and the booking agency fee.

DATED: September 4, 1997

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.