

## STATEMENT OF CONSENSUS RULE MAKING DETERMINATION

### DEPARTMENT OF TAXATION AND FINANCE

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because it merely repeals a regulatory provision that is no longer applicable to any person and makes related clarifying and technical changes. The rule updates certain provisions in section 527.9 of the Sales and Use Taxes Regulations concerning the sales tax on hotel occupancy.

The rule repeals the at least one-week stay requirement that was a component part of the longstanding test for nontaxable bungalow occupancy contained in section 527.9(e)(5) of the regulations. The test is used to determine whether the rental of a bungalow or similar living unit constitutes the rental of hotel occupancy, which is subject to sales tax, or the rental of real property, which is not subject to sales tax. On June 2, 2011, a Division of Tax Appeals Administrative Law Judge found the one-week stay component of the test to be invalid. The Department did not take exception to this determination and decided to accept the ALJ's conclusion. This change was announced in TSB-M-12(4)S, *Elimination of One-Week Stay Test to Determine if the Rental of a Bungalow or Similar Living Unit is Subject to Sales Tax*. As noted in TSB-M-12(4)S, the regulations are now being amended to conform to this position by eliminating the one-week stay requirement contained in the regulations.

The rule also makes clarifying changes in section 527.9 of the regulations to delete the gender-specific term "maid," and a technical change to acknowledge, by the addition of a new cross-reference, that amendments to the Tax Law were made in 2010 which affect the application of sales tax on rent received for hotel occupancy by *room remarketers* (Chapter 57 of the Laws of 2010). These changes are non-controversial in nature.