

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, subdivisions (1) and (8) of section 1142, and section 1250 (not subdivided) of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Sales and Use Taxes Regulations, as published in Subchapter A of Chapter IV of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, the amendments to read as follows:

Section 1. Subdivision (a) of section 527.9 of the regulations is amended to read as follows:

(a) “Imposition.” (1) A sales tax is imposed on the rent for every occupancy of [any] a room or rooms in a hotel, motel, or similar establishment in New York State. The tax is imposed at the combined [statewide] State and local sales tax rate in effect at the [situs] location of such establishment. However, [except that] the tax [shall] does not apply to [(1) the charges];

(i) rent for occupancy [by] of a permanent resident [, or (2) where the charge is];

(ii) rent of \$2 or less per day; or

(iii) rent for any occupancy that is otherwise excluded or exempted from tax under the Tax Law or under any other provision of law.

(2)(i) Except as otherwise provided in this section, reference to tax includes the State and local sales taxes that are imposed on rent received for hotel occupancy under Article 28 and pursuant to the authority of Article 29 of the Tax Law that are administered by the Commissioner of Taxation and Finance.

(ii) Except as otherwise provided in this section, reference to tax also includes the fee imposed by section 1104 of the Tax Law on every occupancy of a unit in a hotel located in New York City. This fee is administered and collected by the commissioner in the same manner as the tax imposed on rent received for hotel occupancy. The hotel unit fee is not included in the amount of rent upon which the tax is computed.

Section 2. Paragraph (1) of subdivision (b) of section 527.9 of the regulations is amended to read as follows:

(1) “Hotel.” A hotel is a building, or portion of it, [which] that 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. 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) maid, 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).

Section 3. Paragraph (7) of subdivision (b) of section 527.9 of the regulations is amended to read as follows:

(7) “Rent.” (i) [The] Rent is the consideration received for hotel occupancy valued in money, whether received in money or otherwise. The term “rent” includes charges for accommodations, services, facilities, amenities, and items that are incidental to the occupancy of the room or rooms, whether those charges are separately stated or included as one sum in the rate for the room or rooms. This includes, but is not limited to,

charges for the use of furnishings and equipment[.]; charges for maid service, towel and linen service, local telephone service (not billed on a per-call basis); and other [accommodations] similar incidental charges. See, also, subdivision (i) of this section concerning miscellaneous transactions.

(ii) [Charges] Reasonable and separately stated charges that are not incidental to the occupancy of a room or rooms in a hotel are not considered to be rent. For example, reasonable and separately stated charges for food and drinks, entertainment, valet and laundry service, [theatre] theater ticket service, parking, and transportation do not constitute rent, but may be taxable under other sections of the Tax Law. See, for example, subdivisions (h) and (i) of this section concerning food services and other miscellaneous transactions.

Section 4. Examples 2 and 3 in subdivision (b) of section 527.9 of the regulations are REPEALED, and paragraph (8) of subdivision (b) is further amended to read as follows:

(8) “Permanent resident.” (i) (“a”) [For purposes of the taxes imposed under sections 1105 and 1109 and pursuant to the authority of article 29 of the Tax Law] Except as provided in clause (“b”) of this subparagraph, any occupant of any room or rooms in a hotel for at least 90 consecutive days [shall be] is considered a permanent resident with regard to the period of such occupancy. There is no tax on the [charge] rent for occupancy of a hotel room by a permanent resident. [The] A hotel operator must collect the [taxes imposed under sections 1105 and 1109 and, pursuant to the authority of article 29 of the Tax Law,] tax from [the] an occupant until the occupancy reaches 90 consecutive days. When continuous occupancy [reaches] has reached 90 days, the sales tax is no longer imposed and the tax previously collected [under sections 1105 and 1109 and, pursuant to the authority of article 29 of the Tax Law,] is refundable to the occupant. If any part of [such] the tax refunded by the operator to the occupant has been paid to the Department of Taxation and Finance, the operator may take a credit in the amount of the tax paid on the operator’s next timely filed sales tax return. If the tax is not refunded to the occupant by the hotel operator, the occupant may apply directly to the department for a refund. See Part 534 of this Title for general information concerning refunds and credits.

“Example [1].” A corporation contracts with a hotel operator for five rooms [at the rate of \$10 a night] on a continuing basis for use by its employees, and it uses additional rooms at the hotel as the need arises. The operator is required to collect tax on the rent for occupancy [charge to] that is received from the corporation. When 90 consecutive days of occupancy have passed, the corporation will be [classified as] considered a permanent resident [for purposes of the taxes imposed under sections 1105 and 1109 and pursuant to the authority of article 29 of the Tax Law,] with respect to the five rooms occupied continuously for 90 days. At that time, the hotel operator is no longer required to collect tax on the rent for the five rooms and the corporation is entitled to a refund of [such taxes] the tax previously paid on the [charge] rent for these occupancies. As [regards] to the additional rooms that the corporation occupies, it is [a nonpermanent occupant] not a permanent resident and is not eligible for a sales tax exclusion or refund.

(“b”) For purposes of the local sales tax imposed in New York City under section [1107] 1210 of the Tax Law, any occupant of any room or rooms in a hotel for at least 180 consecutive days [shall be] is considered a permanent resident with regard to the period of such occupancy. [The hotel operator must collect the] Accordingly, the provisions of clause (“a”) of this subparagraph do not apply to this tax [imposed under section 1107 of the Tax Law from the occupant] until [the] occupancy reaches 180 consecutive days. [When continuous occupancy reaches 180 days, the sales tax collected under section 1107 of the Tax Law is refundable to the occupant.]

(ii) The change of rooms within the same hotel [will] does not alter a person’s status as a permanent resident nor [affect the establishment of] interrupt the number of consecutive days necessary in order to establish permanent residency [during the days of his occupancy].

(iii) A permanent resident who transfers from one hotel to another hotel, whether or not the hotels are run by the same operator, loses [his] permanent resident status[,], and [he] must complete the

required number of days at the new establishment before [he becomes] becoming a permanent resident there. Similarly, a change of hotels by an occupant who is not yet a permanent resident interrupts the number of consecutive days necessary in order to establish permanent residency.

(iv) When a hotel room has more than one occupant that pays rent for the right to occupy the room, the status of permanent resident is determined individually for each occupant.

(v) [A] An occupant who is a permanent resident of a hotel and who permits the operator to rent [his] the occupant's room during [his] the occupant's temporary absence will no longer be considered a permanent resident if [for] during the period of [his] absence [he] the occupant no longer has the right to use or possess [a] another room in the same hotel. [Upon his] In which case, upon the occupant's return, [he] the occupant must reestablish permanent resident status. The new occupant to whom the room is rented during the temporary absence is liable for tax until [he maintains] occupancy is maintained by the new occupant for the required number of consecutive days.

(vi) When a hotel room is rented by a business entity for use by an employee, customer, client, or other authorized person, the days that the person occupies the room for which the business pays the rent to the hotel operator are considered to be days that the room is occupied by the business, provided the business is not reimbursed or otherwise paid for the right to occupy the room. Days when the room is rented but remains unoccupied and for which no one reimburses or otherwise pays the business for the right to occupy the room are also considered to be days that the room is occupied by the business.

Section 5. Examples 1 through 5 in subdivision (c) of section 527.9 of the regulations are REPEALED, and subdivision (c) is further amended to read as follows:

(c) "Computation." (1) [Occupancy] Rent for the occupancy of a hotel room or rooms is taxable [where] if the [daily] rate is more than \$2 [dollars] per day. When rent is charged on a weekly [or], monthly, or other

basis, the daily rate is computed by dividing the number of days in the [chargeable] rental period into the total [charge] amount of rent for the period.

(2) If [a local tax is enacted or if] there is an increase or decrease in the tax rate, tax must be collected at the new rate on rent received for any occupancies that occur on and after the effective [during the chargeable period when] date of the rate change. If rent is charged [on] at other than a daily rate, the tax [is] must be apportioned on a “pro rata” basis.

(3) [Occupancy] Rent for the occupancy of dormitory-type sleeping facilities furnished at ski lodges, dude ranches, and similar establishments is subject to tax on the rate charged each occupant[, where] if the rent is more than \$2 per day per person. In all other types of hotel rooms, taxability is determined by the daily rate for the room, not the charge per person.

(4) Certain local jurisdictions are authorized to impose and administer [an] additional [tax] taxes on hotel or motel occupancy (see, for example, section 1202-a “et seq.” of the Tax Law). Such a locally administered tax is not included in the [base on] amount of rent upon which [a] the sales tax is imposed [by subdivision (e) of section 1105 of the Tax Law and by local jurisdictions under article 29 of the Tax Law].

Section 6. Examples 1 through 3 and the cross-reference in subdivision (d) of section 527.9 of the regulations are REPEALED, and subdivision (d) is further amended to read as follows:

(d) “Exemptions from tax on rent for hotel occupancy.” The [following] persons and organizations described in section 1116 of the Tax Law and Part 529 of this Title are exempt from [the State and local] sales tax imposed on rent for hotel occupancy[:]. See Part 529, “Exempt Organizations.”

(1) New York State and its agencies [and], instrumentalities, public corporations, and political subdivisions (New York State governmental entities). (i) Where payment of rent is made by a representative or employee of [the] a New York State [or its political subdivisions] governmental entity while on official

business, the exemption from tax is established by furnishing the hotel operator with a properly completed ["Tax Exemption Certificate" (form AC-946)] exemption certificate.

(ii) Where direct payment is made to the hotel operator by the State governmental entity for occupancy [by a] of its representative or employee [of the State or its political subdivisions] while on official business, no exemption certificate is required in order to establish the exemption. However, proof of the payment, such as a copy of the voucher or check received, must be retained by the hotel operator.

(2) The United States of America and its agencies and instrumentalities (United States governmental entities). (i) Where payment of rent is made by a [Federal] representative or employee of a United States governmental entity while on official business, the exemption from tax is established by furnishing the hotel operator with a properly completed ["Exemption Certificate, Tax on Occupancy of Hotel Rooms" (form ST-129)] exemption certificate.

(ii) Where direct payment is made to the hotel operator by the United States governmental entity for occupancy [by an] of its representative or employee [of the Federal government] while on official business, no exemption certificate is required in order to establish the exemption. However, proof of the payment, such as a copy of the voucher or check received, must be retained by the hotel operator.

(3) The United Nations, any international organization of which the United States is a member, and [ambassadors, ministers or other] diplomatic [representatives of foreign governments] missions and personnel.

(i) Where payment of rent is made by a representative or employee of the United Nations [employees,] or [employees] of any international organization of which the United States is a member, while the representative or employee is on official business, the exemption from tax is established by furnishing the hotel operator with a properly completed ["Exempt Organization Certification" or a properly completed Certificate of Sales Tax Exemption for Diplomatic Missions Personnel, whichever is applicable] exemption certificate.

(ii) Where [payment is] payments are made by diplomatic [or consular representatives] missions and personnel (including members of their families), the exemption from tax is established by furnishing the hotel operator with [a] properly completed [Certificate of Sales Tax Exemption for Diplomatic Missions and Personnel] exemption certificates.

(iii) In addition to the exemption certificates required by this paragraph and notwithstanding any other provision of this Title, the exemption from tax on rent received for hotel occupancy applicable to diplomatic missions and personnel may be administered in conjunction with the United States Department of State's or the American Institute in Taiwan's, as the case may be, most current tax-exemption program. Where the United States Department of State has extended its tax-exemption program to the United Nations or to any international organizations of which the United States is a member, the exemption from the tax on hotel occupancy may also be administered in conjunction with that program.

(4) Organizations determined to be exempt under [section] sections 1116(a)(4) and (5) of the Tax Law (exempt organizations). (i) Where payment of rent is made to a hotel operator by an exempt organization for the occupancy of rooms for its own use[,] or for use by its officers [and], employees, members, or other representatives in the conduct of the organization's activities, the exemption from tax is established by furnishing the hotel operator with a properly completed ["Exempt Organization Certification form"] exemption certificate.

(ii) Where the exempt organization [purchases] rents rooms from a hotel operator for [resale] the specific purpose of re-renting the rooms to its officers, employees, members, or other representatives participating in the organization's activities, it is not liable for tax if a properly completed ["Exempt Organization Certification form"] exemption certificate is submitted to the operator[, and the]. The exempt organization is not required to collect tax on the [charge] charges for occupancy [to its members because it is not the operator of a hotel] that it receives.

(iii) [(“a”)] Where [payment is] payments are made directly to the operator for hotel occupancy by use of personal funds or [a] personal credit [card] /debit cards of [duly authorized representatives acting on behalf of a post, organization or affiliate exempt under section 1116(a)(5) of the Tax Law to which an exempt organization certificate has been issued, the exemption is established by furnishing the operator with a properly completed “Exempt Organization Certification for Hotel or Motel Occupancy by Representatives of Veterans’ Organizations” that has been executed by the post, organization or affiliate.

(“b”) Where payment is made directly to the operator by] officers, employees, members, or other representatives of an exempt organization, other than duly authorized representatives acting on behalf of a post, organization, or affiliate as described in section 529.8(j) of this Title, there is no exemption from the tax on hotel occupancy.

(iv) An exempt organization [which] described in section 1116(a)(4) of the Tax Law that operates its own hotel (or [offers rooms] operates a leased [from a] hotel [operator for rent]) in furtherance of the purposes for which it was organized is not required to collect tax on the rent for occupancy [charges to] that it receives from its members or other guests if it carries on activities in furtherance of [the] such purposes [for which the organization was organized are carried on] within the same [establishment] premises. When such activities are not carried on within the same [establishment] premises, the [occupancy charges to] rent received from its members and guests [are] is subject to tax.

(v) Notwithstanding subparagraph (iv) of this paragraph, any hotel operated by a college or university that offers 100 or more rooms for occupancy must collect the tax on rent received from occupants unless the occupants are otherwise excluded or exempted from tax.

Section 7. Examples 1 and 2 in subdivision (e) of section 527.9 of the regulations are REPEALED, and subdivision (e) is further amended to read as follows:

(e) “Nontaxable [occupancy] facilities.” The following [occupancies] facilities are not subject to the tax imposed on rent received for hotel occupancy:

(1) [a] Places of assembly. A room or suite of rooms containing no sleeping [facilities] accommodations and used solely as a place of assembly (see paragraph (b)(6) of this section)[;] is not a room or rooms in a hotel upon which the occupancy tax is imposed. However, the rental of a place of assembly in conjunction with the sale of food or drink may be subject to tax under section 1105(d) of the Tax Law. See subdivision (h) of this section and section 527.8 of this Part.

(2) Health-care and similar facilities. A nursing [homes] home, rest [homes, convalescent homes, maternity homes for expectant mothers, residences or homes for adults or retardates. When such facilities] home, family care home, or similar facility that is registered with [the] or under the supervision of a New York [State Department of Social Services or Department of Mental Hygiene] or Federal governmental agency, whether the facility is publicly or privately owned and operated, [accept as patients] that accepts persons who require special care on account of age, illness, mental or physical condition, or the like[,] and [provide] that provides this special care [either by nurses, orderlies or aides, they are deemed] is not [to be hotels] a hotel with respect to such [patients] individuals.

(3) Summer camps and other overnight camps for children. (i) A camp for children [which] that provides overnight sleeping accommodations and a program of [instruction or] instructions, training [which], or other organized activities that the campers are required to pursue under the supervision of counselors or other supervisory personnel is not a hotel. The fee paid for [attendance at] a child to attend such a camp is not subject [neither] to [a] the tax on rent received for hotel occupancy nor [a] the tax imposed on meals pursuant to section 1105(d) of the Tax Law. [Where] However, unless otherwise excluded or exempted from tax, if guest facilities are provided for parents or others, [a tax is] taxes are due on [the occupancy charges] any rent of more than \$2 per day for these occupants and on any receipts from the sales of meals to these occupants.

(ii) Sales tax is not imposed on rentals of campsites, trailer sites, or other real property.

(4) College dormitories and other student-housing facilities. A dormitory [or], apartment [belonging to], house, or other facility operated by a school, college, or university in which its students reside is not a hotel. [Where] However, unless otherwise excluded or exempted from tax, if facilities are provided for parents, alumni, or others, [the charge] any rent that is charged for their occupancy is taxable if it is more than \$2 a day.

(5) Bungalows and similar living units. (i) A [lessor of bungalows, who rents bungalows which are] bungalow or similar furnished living [units] unit limited to a single-family occupancy[,] is not [the operator of] a hotel[. Therefore, the rents for the occupancy of such bungalows are not taxable,] provided: [(i)]

“a”) no maid, food, or other common hotel services, such as entertainment or planned activities, are provided by the lessor; and [ii]

“b”) the rental is for at least one week.

(ii) The furnishing of linen by the lessor [with the rental of a bungalow,] without the service of changing the linen[,] does not alter the nontaxable status of [the] any rental charges.

Section 8. Examples 1 and 2 in subdivision (f) of section 527.9 of the regulations are REPEALED, and subdivision (f) is further amended to read as follows:

(f) “Complimentary accommodations.” (1) When a hotel furnishes complimentary accommodations [to individuals,] for which there is no consideration paid and no rental charged, the hotel operator need not collect the tax on the normal [cost of] rent for the room.

(2) Where there is consideration, such as [the] bringing [of] future business to the hotel by a tour guide, travel representative, or other[, who at the time of negotiations receives his] person in exchange for an accommodation free of charge, the accommodation is subject to the tax on the normal rent [of] for the room, except where the normal rent is [less than] \$2 or less a day or is otherwise excluded or exempted from tax.

Section 9. Paragraph (2) of subdivision (g) of section 527.9 of the regulations is amended to read as follows:

(2) An employer furnishing lodging to [his] employees, as provided in paragraph (1) of this subdivision, is not required to collect or pay a tax on the value assigned to the lodging. However, the employer is liable for tax for any expenses incurred [which] that would ordinarily be taxable to the operator of a hotel.

Section 10. Example 1 in subdivision (h) of section 527.9 of the regulations is REPEALED, and subdivision (h) – excluding the SCHEDULE which remains unchanged – is further amended to read as follows:

(h) “Food services offered by hotels.” (1) The American plan and other similar plans. (i) A hotel operating on the American plan, modified American plan, or other similar plan[,] that combines hotel occupancy and food services for a single charge must collect tax on the total charge [for both rooms] (if the charge is more than \$2 a [night] day) [and meals for the first 90 days]. [When the] Once an occupant becomes a permanent resident, the hotel operator [will] should discontinue collecting tax on the amount charged for the room, but must continue to collect tax under section 1105(d) of the Tax Law on the charge [and, in] for meals. In lieu of establishing a separate charge for meals, the operator may use the schedule shown below to determine the percentage of the total charge to be apportioned to meals [furnished,] and may collect tax based on that amount.

(ii) If the hotel operator neither separately states the charge for the room and the charge for meals nor uses the above schedule, the entire charge is taxable whether the occupant is a permanent resident or not. [(ii)]

(iii) A hotel offering a free continental breakfast (“e.g.,” juice, pastry, and coffee) may not separately state a reasonable value for the breakfast or use the [American plan] schedule set forth in subparagraph (i) of this paragraph[, as] because the entire charge is subject to tax as rent for occupancy of the room.

(2) [The separately] Separately stated charges for food and drink served at a restaurant [facility], tavern, or other establishment operated by a hotel are taxable under section 1105(d) of the Tax Law. (See section 527.8 of this Part.)

(3) Charges for room service constitute part of the receipt from the sale of food and drink and are taxable under section 1105(d) of the Tax Law.

(4) The rental of a place of assembly in a hotel in conjunction with the sale of food and drink is subject to tax under section 1105(d) of the Tax Law. However, if the hotel merely provides incidental snacks during a break from an activity and the charges for providing the snacks are reasonable and separately stated, only such charges are subject to tax. Examples of these incidental snacks are coffee, tea, donuts, cookies, candy, and ice cream.

Section 11. Subdivision (i) of section 527.9 of the regulations is amended to read as follows:

(i) “Miscellaneous transactions.” (1) The following charges made by hotels are taxable:

(i) Charges for basic telephone [service] services are incidental to hotel occupancy and are taxable as part of the rent for such occupancy. A hotel may not claim a credit or refund for taxes paid to [the phone company] a telecommunications provider on that portion of the service [which] that has been furnished to [the] guests. Charges on a per-call basis for local and intrastate telephone calls are not considered incidental to hotel occupancy, but are taxable under section 1105(b) of the Tax Law. A hotel may claim a credit or refund for taxes it paid to a telecommunications provider on local and intrastate telephone calls resold to guests on a per-call basis. Charges for interstate and international telephone calls and charges for Internet access are not subject to tax.

(ii) Charges for basic television services (regardless of the means by which the services are provided) and charges for the in-room use of movies, videos, or other forms of entertainment (including separately stated

charges for video games, pay-per-view movies and events, premium channels, and other optional programming) are taxable [charges] as part of the rent for occupancy.

(iii) Charges for the rental of tangible personal property, such as recreational equipment, are taxable under section 1105(a) of the Tax Law as receipts from the sales of tangible personal property.

(iv) Charges for the safekeeping of [a guest's] guests' valuables, including the use of safe deposit boxes, are taxable under section 1105(c)(4) of the Tax Law as storage charges.

(v) Charges [for] of a roof garden, cabaret, or other similar facility operated by a hotel are taxable under section 1105(f)(3) of the Tax Law. (See section 527.12 of this Part.)

(vi) Charges for parking, garaging, or storing motor vehicles are taxable under section 1105(c)(6) of the Tax Law.

“Cross reference:” See all of the sections in this Part and Articles 28 and 29 of the Tax Law for additional charges that may be subject to tax.

(2) The following are examples of purchases made by hotels [which] that are subject to tax:

(i) fuel, gas, electricity, steam, basic telephone (not billed on a per-call basis) and telegraph, and other utilities;

(ii) furniture and appliances used in guest rooms and elsewhere at the hotel;

(iii) soap, paper products, and other supplies used in the operation of the hotel; and

(iv) items [which] of tangible personal property that will be used by occupants for recreational purposes, such as golf carts, pool chairs, or other recreational equipment, provided these items are not exclusively rented to occupants.

Section 12. Examples 14 and 15 in subdivision (i) of section 529.7 of the regulations are REPEALED.

Dated: Albany, New York
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Robert L. Megna
Commissioner of Taxation and Finance