

NEW YORK CITY TAX APPEALS TRIBUNAL
ADMINISTRATIVE LAW JUDGE DIVISION

In the Matter of the Petition : DETERMINATION
: :
of : :
: TAT(H)19-2(HO) et al.
USA STAY, LLC : :
: :
: :
: :

Rodriguez-Diaz, C.A.L.J.:

Petitioner, USA STAY, LLC, timely filed a Petition with the New York City (City) Tax Appeals Tribunal (Tribunal) on February 14, 2019 for the tax years of June 1, 2014 through November 30, 2016 to review the City Department of Finance's (Respondent) January 14, 2019 Notice of Determination, which imposes City Tax on Occupancy of Hotel Rooms (Hotel Tax) under Chapter 25 of Title 11 of the City Administrative Code (Code) for the tax years ending August 31, 2014 through November 30, 2016, in the amount of \$83,617.77, plus interest computed to February 28, 2019 of \$30,807.86, for a total amount due of \$114,425.63, and which denied in full Petitioner's claim for refund of Hotel Tax for the tax years ending August 31, 2014 (\$33,504.00), August 31, 2016 (\$99,571.68), and November 30, 2016 (\$63,457.96), for a total of \$196,533.64.

Petitioner also timely filed a Petition with the Tribunal on February 14, 2019 for the tax years of August 31, 2014 through August 31, 2017 to review Respondent's January 14, 2019 Notice of Disallowance denying in full Petitioner's claim for refund of Hotel Tax for the tax years ending August 31, 2014 (\$33,504.00), August 31, 2016 (\$99,571.68), and November 30, 2016 (\$65,457.96), for a total of \$198,533.64, and to review the refund claims for the following ending tax years and for which the Petitioner did

not receive a Notice of Disallowance or refund amounts claimed, when more than six months had elapsed from the time Petitioner filed such claims: February 28, 2017 (\$13,021.95), May 31, 2017 (\$6,082.30), and August 31, 2017 (\$8,706.93), for a total of \$27,811.18. The Petitioner stated in the Petition that the total amount of refund claims for the tax years ending August 31, 2014 through August 31, 2017 is \$226,346.82 but the correct total of these claims is \$226,344.82.

The Petitions, which were consolidated under Tax Appeals number TAT (H)19-2(HO) et al., covered the tax years ending August 31, 2014 through August 31, 2017 (Tax Years).

On June 23, 2021, the parties submitted a Joint Stipulation of Facts and accompanying exhibits. In the Joint Stipulation the parties stipulated, among other things, that if the Petitioner is determined not to be subject to Hotel Tax, it would be entitled to a tax refund before interest of \$192,840.82. This stipulated tax refund amount does not include the refund claim for the period ending on August 31, 2014 of \$33,504.00 stated in the Petition to review the Respondent's January 14, 2019 Notice of Disallowance. On June 6, 2022, the parties submitted a Supplemental Stipulation of Facts and accompanying exhibits, and a consent to have this matter determined on submission without the need for appearance at a hearing pursuant to the Tribunal's Rules of Practice and Procedure (20 RCNY) §1-09(f). On November 1, 2023, Petitioner submitted an Amended Exhibit 1, page 10, replacing page 10 of Exhibit 1, attached to the previously filed June 23, 2021 Joint Stipulation of Facts. On November 27, 2023, the parties submitted an additional Supplemental Stipulation of Facts, which included an Exhibit 1 that replaced in its entirety the Exhibit 1 attached to the previously filed June 23, 2021 Joint Stipulation of Facts. Petitioner filed a Brief on August

23, 2022. Respondent filed a Memorandum of Law on February 28, 2023. Petitioner filed a Reply Brief on June 15, 2023. Respondent filed a Reply Brief on August 17, 2023. Petitioner was represented by Roger S. Blane, Esq., Stephen L. Solomon, Esq., and Kenneth I. Moore, Esq. of Hutton Solomon & Blane LLP. Respondent was represented in the following chronological order by Amy H. Bassett, Senior Corporation Counsel; Martin Nussbaum, Esq., Senior Corporation Counsel; Christopher J. Long, Esq., Assistant Corporation Counsel; Joshua M. Sivin, Esq., Senior Corporation Counsel; and Daniel Joy, Esq., Senior Corporation Counsel.

ISSUE

Whether the Petitioner's residential apartments, which were subleased by Petitioner to Third Parties for varying periods of less than 180 days at a time, constituted a hotel, and therefore, the charges for their sublease were subject to Hotel Tax.

FINDINGS OF FACT

To the extent relevant to this matter, the stipulated facts are set forth below. Additional findings of fact were also made by the undersigned. Unless otherwise stated, all facts pertain to the Tax Years in issue.

Petitioner is a Delaware Limited Liability Company. Petitioner leases residential apartments (Rentals) in New York City from cooperative and condominium owners, and from landlords of rental apartment buildings.

Petitioner in turn subleased these Rentals to third parties (Third Parties) for periods of less than 180 days and for periods of more than 180 days.

Petitioner filed Hotel Tax returns for each ending quarter from August 31, 2014 through August 31, 2017. The undersigned notes that the Hotel Tax returns for the ending quarter of August 31, 2014 through February 28, 2017 provided either a blank or a zero as a response to the lines for the number of rooms either available to transient occupants or rented to permanent residents. However, the Hotel Tax return for the ending quarter of May 31, 2017 provided that 36 rooms were available to transient occupants, and the Hotel Tax return for the ending quarter of August 31, 2017 provided that 47 rooms were available to transient occupants.

On or about November 18, 2016, Petitioner filed an amended Hotel Tax return for the quarter ending August 31, 2016 claiming a refund of \$99,571.68. On or about December 11, 2017, Petitioner filed amended Hotel Tax returns for the quarters ending November 30, 2016, February 28, 2017, May 31, 2017, and August 31, 2017, claiming a refund for a total of \$93,269.14. On or about April 13, 2017, the Respondent selected the Petitioner for a Hotel Tax audit for the period of August 1, 2014 through November 30, 2016. The undersigned notes that each of these five amended returns provided a blank response to the lines for the number of rooms either available to transient occupants or rented to permanent residents.

Respondent conducted an audit of Petitioner's Hotel Tax returns filed for the period June 1, 2014 through November 30, 2016, inclusive. Respondent's audit did not tax or include in the audit result any agreement with a term of 180 days or more.

All the Rentals that the Petitioner offered to Third Parties were fully furnished and equipped with kitchen cookware, utensils, dishes, linens, and towels.

Petitioner offered these Rentals to Third Parties through various internet websites (Websites), which set forth the terms for which the Rentals were made available and other terms between the Petitioner and Third Parties.

Exhibit 1 to the November 27, 2023 Supplemental Stipulation of Facts provides the following samples of Petitioner's advertised Rentals in the Websites:

- (1) "iStayNY - NYC Furnished Rentals [(ISTAYNY Website)]

The Wayback machine -
<https://web.archive.org/web/20140720023423/http://istayny.com:80/property/8124> . . .

Stay¹ Here, Go Places

Times Square (West 47th Street and 8th Avenue) Listing ID 8124 . . . Posted by USA Stay LLC . . .

Photos Floor Plan Map Street View . . . Arrive [date] . . . Depart [date] . . . Please Select Dates . . .

Check in 3:00 pm

Check out 11:00 am . . .

Description

Located in the Midtown West neighborhood this 2 bedroom apartment places you in the center of all the attractions of Times Square. The apartment includes the comforts of home by providing a living room area, dining area, and kitchen. The sofa makes for a comfortable area to lounge and rest in between sightseeing. The kitchen breakfast bar provides for a space friendly way to share meals with your fellow travelers. In the kitchen you will find all the

¹ Webster's II New Riverside University Dictionary (1988), defines the term "stay" in the following way: "To sojourn as a guest or lodger."

appliances and utensils necessary for a convenient stay Towels are provided with your rental. The first bedroom has a Twin sized bed and the second bedroom has a Full sized bed for your bedding accommodations. The living room easily converts into an extra sleeping accommodation with a Full sized pull out bed

Bedding: Linens, pillows and bedding for all beds and sleep sofas. **Towels:** Bath towels, hand towels and wash cloths. 2 of each per bed and sleep sofa. **Toiletries:** 2 rolls of toilet paper and hand soap are provided as a courtesy."

(2) [ISTAYNY Website]

The Wayback machine -
<https://web.archive.org/web/20150930071357/http://istayny.com:80/property/8327>

iStayny Stay Here, Go Places

2 Bedroom in Times Square ID#8327 (East 45th Street and 2nd Avenue.) Listing ID 8327 . . .

Photos Map Street View . . . Arrive [date] . . . Depart [date] . . . Please Select Dates . . .

Check in 3:00 pm

Check out 11:00 am . . .

Description

Featuring simplicity and functionality this two bedroom apartment includes hard wood floors, modern furniture, tasteful decorative touches, and elegant French doors with frosted windows for privacy. Welcoming you with the commodious living room the apartment is set up to include all the comforts of home. A high quality leather sofa, complementing dark finish side table and coffee table construct the perfect ambiance to lounge, relax, watch a movie or simply enjoy some quality time with your fellow travelers. Fully equipped with chestnut cabinets, white appliances, cookware and dishware the kitchen is prepared to meet your needs [The] bathroom features . . . Hollywood style lighting above the mirror and towels provided with your rental for a hassle-free stay. The bedrooms include one queen and one full sized bed for your bedding accommodation The building is appropriately

located across the street from The Amish Market The Midtown East neighborhood is very diverse and eclectic ranging from business skyscrapers to quiet tree-lined streets That by no means makes it boring as there are diverse restaurants and bars to enjoy Luxury shopping is also accessible along East 57th Street, Madison Avenue and Park Avenue. The Chrysler Building, Grand Central Terminal, and St. Patrick's Cathedral are just a few of the landmarks in the area. For transportation there are eight subway lines, bus routes and the Roosevelt Island tram for a worthwhile trip!

Contact Info USA Stay, LLC 453 West 47th Street, Retail Storefront New York, NY 10036 . . . Email: stay@istayny.com

Bedding: Linens, pillows and bedding for all beds and sleep sofas. **Towels:** Bath towels, hand towels and wash cloths. 2 of each per bed and sleep sofa. **Toiletries:** 2 rolls of toilet paper and hand soap are provided as a courtesy.

Reviews

Sep 2012 Great Stay! Great Stay! 'Overall we had a great stay at this apartment in the heart of New York City! The apartment is clean and has everything you would need for a comfortable stay'

(3) "<https://web.archive.org/web/20150920173001/http://www.sublet.com/spider/supplydetails.asp?supplyid=2406814> [Sublet Website]

Details . . . Welcome to the versatile area of Midtown West in New York! In the Clinton/Hell's Kitchen neighborhood this one bedroom apartment is fully furnished and equipped to receive your party. Upon your entrance you encounter the living room that offer[s] the perfect space to lounge, relax, and mingle with your fellow travelers. If you continue farther down[,] you will enter the fully equipped kitchen and dining area. The kitchen includes appliances, cookware and dishware for a convenient stay. . . . Accommodating up [to] four responsible with its versatility in bedding arrangements including one queen sized bed, one full sized Murphy bed and one queen sized sofa bed allowing for some choice. . . . In this wonderful neighborhood you will also find the great fashion

district, home for many well-known designers with a rich history and present influence in the fashion scene worldwide. Also present in the area is the arts industry with many actors, comedians and dancers who chose this area due to its proximity to Broadway, as well as film and dance studios. . . . It all adds up to give the neighborhood lots of charm, culture, history and character.”

Petitioner and Third Parties entered into agreements (Agreements) setting forth the terms and conditions for the subleasing of the Rentals. Once the Petitioner and the Third Parties entered into Agreements, the Third Parties were required to provide the first month’s payment, a security deposit and a one-time cleaning fee. The Petitioner billed the Third Parties for their use of gas and/or electric utility services during the term of the Agreements. The Third Parties could only gain access to the Rentals by obtaining the key from the Petitioner’s management office, which was not located at any of the offered properties.

Exhibit 2 to the June 23, 2021 Stipulation of Facts provides examples of Agreements, which were entered into during the period 6/1/14 - 8/31/17 and were entitled “Monthly Sublease Agreements.” The following are some of the terms of the Agreements in which either a Third Party’s address or identification was included in the Agreements.

1. Monthly Sublease Agreement dated March 23, 2015 between Petitioner and Third Party (March 23, 2015 Agreement)
 - a. Petitioner is referred to as Sublandlord.
 - b. Third Party is referred to as Subtenant.
 - c. The apartment being rented is specifically described by its address.
 - d. The Agreement does not state the Third Party’s address but a copy of the Third

Party's Passport from a foreign country is attached to the end of the Agreement.

- e. Paragraph 1 (Property Keys) provides that, "[t]he keys to the Property . . . may not be provided to Subtenant prior to the time of check in [I]n the past Guests or Guest representatives have gone to property locations prior to the term of their rental Keys will be provided for the bottom lock. Keys are not provided for the top lock."
- f. Paragraph 2 (Term) provides that, "[t]he monthly rent shall commence on 03/24/2015 and will expire on 05/24/2015"
- g. Paragraph 3 (Rent) provides that, "Tenant will pay utilities to the Sublandlord" and provides that "[t]he amount[s] of the monthly Total Rent, . . . Initial Security Deposit and one-time Cleaning Fee" are composed of the following items:
"Utilities[,] Cleaning Fee[,] NYC Occupancy/Room Tax[,] 5.875% NYC Occupancy Tax[,] and Rental Price[.]"
- h. Paragraph 4 (Payment of Total Rent, Cleaning Fee, and Security Deposit) provides the terms for the payment of the Initial Total Rent, Cleaning Fee, and Security Deposit, and it specifies that, "the Initial Total Rent . . . will be due at the time tenant's reservation of the Property is approved by Sublandlord."
- i. Paragraph 5 (Property Furnishings and Supplies) provides that, "[t]he "Property is furnished and has . . . [a] set of linens[,] . . . sheets[,] . . . blanket[,] . . . pillows[,] . . . bath towels[,] hand towels[,] . . . face cloths[,] . . . [k]itchen towels and bathmats[,] . . . [a]ppliances[,] small wares[,] . . . initial supply of toilet paper, hand soap and dishwashing liquid. Replenishment of the above and any additional supplies are the responsibility of the Subtenant. All other supplies such as soap and shampoo will not be provided."

- j. Paragraph 6 (Termination of Lease) provides that, "If any municipal agent ends this Sublease prior to the conclusion of the Term, the Subtenant's recovery against the Sublandlord shall be limited to the unused portion of the Term, calculated on a per diem basis. Conversely, if Sublandlord moves Subtenant to another location for the remainder of the Term, Subtenant shall have no recovery against Sublandlord."
- k. Paragraph 7 (Cancellation Policy) provides that, "Once a payment is made, it is non-refundable unless the cancellation is made pursuant to the terms and conditions of **Paragraph 6** in this Sublease. Unless specifically provided for herein, refunds or credits will not be given, including but not limited to, tenant voluntary vacating the premise prior to the term of agreement[,] sickness, flight changes or delays, delays in other types of transportation, terrorist attacks, severe weather or natural disasters. In the event the Sublandlord is able to rent the property for a portion of the Subtenant[']s remaining sublease term then the landlord will refund the Subtenant proportionally."
- l. Paragraph 9 (Security Levy) provides that, "Sublandlord has the right to use the Subtenant's security deposit to offset (levy) any charges associated with . . . Linens that are lost or damaged; . . . Broken items; . . . Damage to the Property or furnishings in excess of normal wear and tear; . . . Late check out;. . . ."
- m. Paragraph 10 (Maximum Occupancy) provides that, "The maximum number of Subtenants is limited to, the names listed on the rental application or this Sublease, which is [#] persons. Sublandlord and/or Management Company . . . may perform a criminal background check on the names listed above in this **Paragraph 10**. All persons listed above, or any occupant or visitor to the property, shall be bound by the terms and conditions of this Sublease."

- n. Paragraph 11 (Use of Property) provides that, "Subtenant further agrees that if the occupancy of the Property is more than the agreed number of subtenants or those not listed above, such circumstances shall result in a charge of Five Hundred Dollars (\$500) per occurrence, payable immediately, which will be levied against the Subtenant's security deposit. Subtenant agrees that the consequence of any of the above is immediate eviction with no return of rent."
- o. Paragraph 12 (Garbage and Recycling) provides that, "The Subtenant is responsible to abide by the rules established by the building in which the Property is located for garbage and recycling."
- p. Paragraph 13 (Mail) provides that, "All mail for Subtenant should be delivered to Subtenant in care of the Management at the Management Office **Mailbox keys will not be provided to Subtenant under any circumstances.**"
- q. Paragraph 14 (Check In) provides that, "Check in will take place at the Management Office. . . between the hours of 3 p.m. EST and 7 p.m. EST Anyone checking in after 7 p.m. EST will incur a Twenty-Five Dollar (\$25.00) late check in fee and Fifty Dollar (\$50.00) late check in fee after midnight"
- r. Paragraph 15 (Check Out) provides that, "Check out will take place at the Property. Subtenant shall leave the Property keys on the kitchen counter and close the door behind them. The Subtenant must vacate the Property by **3:00 p.m. EST** on the date of check out. In the event you do not vacate the apartment by **3:00 p.m. EST**, the Sublandlord shall have the right to charge Five Hundred Dollars (\$500.00) against your security deposit as well as any other costs and expenses incurred relocating the next subtenant scheduled to occupy the Property,

including but not limited to alternate accommodations such as a hotel room."

- s. Paragraph 16 (Multiple Apartments During One Stay) provides that, "If Guest has booked or otherwise agreed to move from one property to another during a continuous stay [,] . . . Guest may leave their luggage at the Management Office during [the] time" that Guest is waiting to "check into their next apartment. . . ."
- t. Paragraph 17 (Holdover Tenancy) provides that, "If Subtenant remains in occupancy of the Premises after the expiration date of this Sublease, Sublandlord may treat such continued occupancy as a hold over on a month-to-month basis"
- u. Paragraph 19 (Access) provides that, "The sublandlord and Management Company shall have access to the Property for purposes of showing the Property to prospective future subtenants and for repair and inspection. . . . Sublandlord shall notify the Subtenant of its intent to show the Property the day before the scheduled showing and will enter the property at the times provided in the notice. If Sublandlord wishes to show the Property on the same day[,] Sublandlord will only do so if contact is made and permission is granted by the Subtenant. Prior contact and permission will not be required so long as the Sublandlord provided notice to the Subtenant the day prior to needing access."
- v. Paragraph 20 (Internet and Television) provides that, "Wireless Internet is provided free of charge to the Subtenant Internet access code [will be provided] at check in."
- w. Paragraph 21 (Utilities) provides that, "c. Utility Costs: The Subtenant shall be responsible for payment of the gas and electric bill as well as the cable bill in addition to the Total Rent and Cleaning Fee Sublandlord may apply Subtenant's security deposit to the cost of utilities."

- x. Paragraph 22 (Cleaning), provides that "Sublandlord will deliver the Property to the Subtenant [in] clean condition and with fresh linens Daily maid service is not provided."
- y. Paragraph 23 (Repairs and Maintenance Issues) provides that, "Subtenant shall contact the Management Company for all repairs and maintenance and customer service issues The Sublandlord and Management Company shall have access to the Property for repairs to this and adjacent properties as we . . . [perform] regular monthly exterminating services, subject to the notice requirements set forth in Paragraph 25 hereof."
- z. Paragraph 24 (Failure to Provide Services) provides that, "Issues including but not limited to, broken items, missing supplies, sanitation issues, interrupted services or utilities must be reported to the Management Company In the unlikely event that the Property, due to unforeseen circumstances, is not available or otherwise uninhabitable, the Sublandlord may offer the Subtenant a property that is listed to sleep as many or more guests than the original property and is of equal or greater value, if available"
- aa. Paragraph 25 (Notice During Stay) provides that, "Notice shall be deemed given to the Subtenant via e-mail to the e mail address listed above or the e-mail address Subtenant used to correspond with the Sublandlord or the Sublandlord's agent or the email address the booking link was sent to in acquiring the reservation"
- bb. Paragraph 26 (Alterations) provides that, "Subtenant shall not make alterations to the Property without prior written consent of Sublandlord, which sublandlord may withhold in its sole discretion."
- cc. Paragraph 27 (Subleasing/Assignment of Sublease) provides that, "Subtenant shall

not assign this Sublease or sublease the Property without prior written consent of Sublandlord, which Sublandlord may withhold in its sole discretion."

dd. Paragraph 28 (Indemnity) provides that, "Sublandlord shall not be liable for damage or losses . . . resulting from theft, assault, vandalism or other crimes . . . Sublandlord recommends that Subtenant secure his/her own insurance to protect against such occurrences"

ee. The last paragraph of the Agreement provides that, "By selecting **Submit**, I understand and agree that . . . until such time as the Sublease is approved by the Sublandlord, the submission shall be deemed only a reservation request . . . I acknowledge that this is a reservation request which is subject to the approval of the Sublandlord and that upon collection of [U.S.] funds . . . for the 1st Payment set forth, including any payment processing fees, . . . my reservation shall be deemed confirmed."

ff. Exhibit A to the Agreement is entitled Rental Rules, which provides the following:

"1. The Management Company is responsible for all of Subtenant's needs If the building in which the Property is located has a security desk, concierge desk, super, or doorman, such services are **not provided** to the Subtenant. The Subtenant must call the Management Office for all of Subtenant's needs.

2. No parties or social gatherings of people that are not registered to stay in the Property. People other than those in the Guest party set forth above may not stay overnight in the Property. . . .

7. If your internet or television is not working[,] call the Management Office - **Do Not Unplug any Electronic Device** - such as a router or television box - unless instructed by the Management Company as

this may result in resetting of the box and loss of service.

8. The front door to the building must not be left open. After moving in luggage please make sure the door is closed and locked . .

. .

10. Neither the Sublandlord nor the Management Company is responsible for the loss of personal belongings or valuables of the Subtenant. By accepting this reservation, it is agreed that the Subtenant expressly assumes the risk of any harm arising from their use of the Property or others whom they invite to use the Property. . . .

14. Housekeeping: While linens and bath towels are included in the unit, daily maid service is not provided or in any way . . . included in the rental rate. . . .

gg. Exhibit B to the Agreement is entitled Arrival Form, which requires Third Parties' initials, signature and date to confirm many of the terms stated in the Agreements and provides a list of Lease Attachments.

2. Monthly Sublease Agreement dated May 28, 2015, between Petitioner and Third Party (May 28, 2015 Agreement). The U.S. address stated for the Third Party in this Agreement is located outside of New York State. The term of the May 28, 2015 Agreement is from 06/01/2015 through 08/14/2015 and its contents are essentially identical to the terms of the March 23, 2015 Agreement, except that the amounts of the total rent and charges due are different and that the May 28, 2015 Agreement does not have Exhibits A and B attached to it.

3. Monthly Sublease Agreement dated July 24, 2015, between Petitioner and Third Party (July 24, 2015 Agreement). The Agreement does not state the Third Party's address but a copy of the Third Party's Passport from a foreign country is attached to the end of the Agreement. The term of the Agreement is from 08/14/2015 through 09/18/2015 and its contents are essentially identical to the terms of the March 23, 2015 Agreement, except that the amounts of the total rent and charges due are different and that the

July 24, 2015 Agreement does not have Exhibits A and B attached to it.

4. Monthly Sublease Agreement dated November 17, 2015, between Petitioner and Third Party (November 17, 2015 Agreement). The U.S. address stated for the Third Party in the November 17, 2015 Agreement is located outside of New York State. The term of the Agreement is from 11/18/2015 through 12/18/2015 and its contents are essentially identical to the terms of the March 23, 2015, except that the amounts of the total rent and charges due are different and that the November 17, 2015 Agreement does not have Exhibits A and B attached to it.
5. Petitioner also submitted sample Agreements dated April 7, 2016, August 4, 2016, November 8, 2016, February 6, 2017, and March 15, 2017. The periods of these Agreements are greater than one week and less than six months. The terms of these Agreements are essentially identical to the March 23, 2015 Agreement, except for the following differences:
 - a. The names of the Third Parties are stated in the agreements but neither an address nor a copy of identification is provided for the Third Parties.
 - b. The sections stating the charging details are entitled "Booking Charges."
 - c. The check in and check out times are different.
 - d. The February 6, 2017 Agreement provides in the section entitled "Deposit/Payment Schedule" a list of "Airbnb" payment amounts and dates.
 - e. These agreements contain Exhibits A and B, and an additional Exhibit C for Guarantor.

Attached to the June 6, 2022 Supplemental Stipulation is an Affidavit of Darren Lachar, dated April 7, 2022. Mr. Lachar affirmed that he has been "the sole owner and President of [Petitioner] since its formation." He also affirmed that,

"[d]uring a tenant's stay at one of [Petitioner's] apartments, [Petitioner] did not provide any of the following common hotel services as part of the terms of a tenant's

rental[:] Food[,] Maid service[,] Cleaning service[,] Room service[,] Entertainment[,] Change of towels and linens[,] Replacement of toiletries[,] Planned activities[,] and Concierge Service If a tenant occupying the residential apartments wanted the apartment cleaned during their stay, [Petitioner] would provide them with the name and phone number of a cleaning service which the tenant could hire and pay directly."

Attached to the June 6, 2022 Supplemental Stipulation there is also documentation regarding eviction proceedings in the City Civil Court, NY County, conducted by Petitioner against a Third Party who occupied a Rental.

STATEMENT OF POSITIONS

Petitioner, asserts that since the sublets of the Rentals did not include customary hotel type services, such as room service, maid service, cleaning service, concierge service, replacement of linens and toilet paper, etc., the sublets constituted a rental of real estate possessing all the qualities of a sublandlord-subtenant relationship, which was not subject to Hotel Tax. Petitioner claims that the sublandlord-subtenant relationship between Petitioner and Third Parties is evidenced by the terms of Monthly Sublease Agreements and the Petitioner's hold over proceeding in a City Civil Court against a Third Party. Petitioner asserts that the fact that Code § 11-2501 defines "hotel" for Hotel Tax purposes by excluding only the customary hotel type services of "meals" shows that the legislature intended to include in the definition of "hotel" other customary hotel type services.

Petitioner claims that Respondent's 2003 modification of the City Regulation (19 RCNY) § 12-01 (Regulation 12-01) to state what constitutes a hotel through the elimination of the non-taxability of bungalows, which are furnished living units, when no hotel type services are provided, was Respondent's attempt to legislate in absence of the changes to the definition of hotel provided in Code § 11-2501, case law, and common law. Petitioner contends that the amended Regulation 12-01 extended the meaning of the term "hotel" in a way that is inconsistent with Code § 11-2501 definition of "hotel." Petitioner claims that Regulation 12-01 permits the imposition of Hotel Tax in situations not embraced within the statute because it simply disregards the common law and case law definitions of the term "hotel," which provide that for living accommodations to constitute a hotel there must be customary hotel type services.

Petitioner further contends that the definitional provisions of the term "hotel" contained in the Hotel Tax, and in the State's administered sales taxes on hotel room occupancies, which are the State's and City's sales taxes on these occupancies, are in pari materia because these provisions are identical, except for the period of occupancy to qualify for the permanent resident exemption. Petitioner argues that the definition of the term "hotel" in these three tax laws must be construed with reference to each other to avoid the different way that the City interprets this term for its sales tax and for its Hotel Tax. Petitioner argues that since the City sales tax for hotel room occupancy is governed by the State's definitions, regulations, and interpretations, and the State does not impose the State or City sales tax on the fee for occupancy of a furnished apartment if no customary hotel type services are provided, then no Hotel Tax

shall be imposed on the occupancy of a furnished apartment if no customary hotel type services are provided.

Petitioner asserts that the statutory burden of proof established in Code § 11-2502.j does not shift to the Petitioner regarding the taxability of monthly rent from the Rental subleases because they are not a hotel providing all the type of customary hotel services that are still included in definition of "hotel" stated in Code §11-2501.

For these reasons, Petitioner requests that the Petitions be granted, that the Notices of Determination and Disallowance be cancelled, and that the stipulated refund amount be granted to it.

Respondent argues that the focus of the plain and unambiguous language of Code § 11-2501 defining "hotel" is on transiency of occupancy and not on whether customary hotel type services are provided. Respondent contends that Petitioner's sublets of Rentals to guests on a transient basis met the definition of "hotel" in Code § 11-2501, regardless of whether customary hotel type services were provided. Respondent claims that Petitioner's sublets of Rentals to transient guests constituted a hotel because they occurred regularly and possessed all the qualities of an innkeeper-guest relationship.

Respondent claims that the inclusion of a bungalow in the definition of "hotel" provided in Regulation 12-01 is consistent with and is within the broad definition of "hotel" provided in Code § 11-2501. Respondent contends that since Regulation 12-01 was duly promulgated under the City Administrative Procedure Act, and its definition of the term "hotel" is rational and consistent with the definition of this term in Code § 11-2501, the interpretative Regulation 12-01 should receive deference over the

statute. Respondent argues that Petitioner's Rentals are "bungalows" as defined in Regulation 12-01, and thus, they were a hotel, regardless of whether customary hotel services were provided.

Respondent contends that Hotel Tax does not need to be construed with reference to the State's administered sales taxes on hotel room occupancies. Respondent asserts that the Hotel Tax statute unambiguously provides for a broad definition of "hotel" because the legislature through the plain language of the Hotel Tax Enabling Legislation expressed its intent that the Hotel Tax and the State's administered sales tax be read independently, and the Hotel Tax Legislative History acknowledged the different interpretations of the Hotel Tax and the State administered sales tax.

For these reasons, the Respondent requests that the Petitions be denied, that the Notices of Determination and Disallowance be sustained, and that the stipulated tax refund amount be denied to the Petitioner.

CONCLUSIONS OF LAW

The New York State Legislature (Legislature) has the exclusive power of taxation (NY Const, art XVI, § 1). The Legislature may delegate by enabling legislation its taxation power to the City, which has no inherent taxing power (NY Const, art IX, § 2[c][8]; *Castle Oil Corp. v City of New York*, 89 NY2d 334 [1996]). Upon the Legislature's delegation of taxing power to the City, the City can only levy and collect taxes in a constitutional way if these are within the expressed limitations

of a specific enabling legislation (NY Const, art IX, § 2[c][8]; *Castle Oil Corp.*, 89 NY2d 334).

The Legislature's enabling statute in Chapter 161 of the Laws of 1970 authorized the City to impose "a tax . . . such as the Legislature has or would have the power and authority to impose on persons occupying hotel rooms in [the] city," (NY CLS Uncons Laws, ch 288-C, § 1 [1], as added by L 1970, ch 161, § 1, as amended; McKinney's Unconsolidated Laws of NY § 9441). The City enacted by Local Law 15 its Hotel Tax pursuant to the tax authority provided to it by the Legislature's 1970 Enabling Statute. The Hotel Tax is a separate tax on hotel room occupancies in addition to the City sales tax on hotel room occupancies (New York City Council, Committee on Finance, Committee Report, Int. No. 1208-2023, November 2, 2023, *A Local Law to Amend the Administrative Code of the City of New York, in Relation to Extending the Rate of the Additional Tax on the Occupancy of Hotel Rooms*).

The City properly exercised its Hotel Tax authority when it enacted Code § 11-2502.a(1), which imposes "a tax for every occupancy² of each room in a hotel in the city of New York" Code § 11-2501.5 defines a "hotel" as "[a] building or portion of it which is regularly used and kept open as such for the lodging³ of guests" and which "includes an apartment hotel, a motel, boarding house or club, whether or not meals are served." This statutory definition of a "hotel" is broad enough to include

² Code § 11-2501.4 provides the following definition of "Occupancy:" "The use or possession, or the right to the use or possession of any room or rooms in a hotel, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms. . . ."

³ Webster's II New Riverside University Dictionary (1988) provides the following definition of "lodging": "To provide with quarter temporarily, esp. for sleeping".

accommodations that do or don't offer meals and does not make any reference to customary hotel type services.

The Hotel Tax is not imposed on a permanent resident, who is "[a]ny occupant of any room or rooms in a hotel for at least [180] consecutive days" (Code §§ 11-2502.b[1], 11-2501.8).⁴ The Hotel Tax is also not imposed on the rent for any occupancy of a room that is exempted from tax in Code § 11-2502.c-.e, or on the rental of a room used or possessed as a place of assembly as defined in Code § 27-232 (Code § 11-2501.6).

Petitioner does not claim that Third Parties qualify as permanent residents, or as tax exempted occupants, or as excluded users of a place of assembly.

All rents generated from the occupancy in a hotel are presumed to be subject to Hotel Tax until the contrary is proven by "the operator, the room remarketer, or the occupant" (Code § 11-2502.j).

Code § 11-2511 provides the Respondent the power and authority to "make, adopt and amend rules and regulations appropriate to the carrying out" of the Hotel Tax such as Regulation 12-01.

Regulation 12-01, during the Tax years at issue, provides the following definition of the term "hotel," which is almost identical to the way this term is defined in Code § 11-2501.5: "a building or portion of a building that is regularly used and kept open as such for the lodging of guests." Regulation § 12-01 further expands the statutory definition of "hotel" by providing that it "includes an apartment hotel [,] [which is a building or

⁴ Regulation § 12-01 provides the following definition of "Permanent resident:" "A person is a 'permanent resident' as of a given date if that person has occupied or has had the right to occupy a room or suite of rooms in a particular hotel for 180 consecutive days next preceding such date. . . ."

portion of it wherein apartments are rented to guests for fixed periods of time, either furnished or unfurnished[,], a motel, boarding house, bed and breakfast, or club, whether or not meals are served[,]" and "a bungalow, which is a furnished living unit intended for single family occupancy that is regularly used and kept open for the lodging of guests for consideration"⁵

The determination of the question in the present matter is based on the clear and unambiguous definition of the term "hotel" stated in Code § 11-2501.5 (*Washington Post Co. v New York State Ins. Dept.*, 61 NY2d 557 [1984], quoting *Roth v Michelson*, 55 NY2d 278, 283 [1982], and *Patrolmen's Benevolent Assn. of City of New York v City of New York*, 41 NY2d 205, 208 [1976]). The New York State Supreme Court, Appellate Division, First Department, held that "'[a]s the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof'" (*Roberts v Tishman Speyer Properties, L.P.*, 62 AD3d 71, 81 [1st Dept 2009], *affd* 13 NY3d 270 [2009], quoting *Majewski v Broadalbin-Perth Cent. Sch. Dist.*, 91 NY2d 577, 583 [1998]). The language of the statute "must be read in [its] context, and words, phrases, and sentences of a statutory section should be interpreted with reference to the scheme of the entire section" (McKinney's Cons Laws of NY, Book 1, Statutes § 97).

⁵ Regulation § 12-01 states "that for occupancies during taxable quarters beginning on or before, September 1, 2003, the rental of a bungalow for at least one week will not be subject to the tax provided: no maid, food or other common hotel services such as entertainment or planned activities are provided. The furnishing of linen by the lessor with the rental of a bungalow without the services of changing the linen does not alter the nontaxable status of the rental charges for such periods." Furthermore, Regulation § 12-01 provides the following example of a "bungalow" in *Illustration (iii)*: "Individual B owns an apartment in New York City. Beginning on January 1, 2004, B begins to regularly rent or offer to rent the apartment, furnished, to guests on a transient basis. B's rental of the apartment to guests on a transient basis is subject to the tax regardless of whether the rentals are for periods longer than one week."

Therefore, in this case matter there is no need to defer to the definition of "hotel" provided in Regulation 12-01 because this case involves a question of "pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent" (*Kurcsics v Merchants Mut. Ins. Co.*, 49 NY2d 451, 459 [1980]).

Code § 11-2501.5 defines a "hotel" by the nature of the occupancy available for the lodging of guests, which implies the existence of a relationship between an innkeeper and a guest. Since Code § 11-2502.b(1) provides a permanent resident exemption, then the combined reading of the definition of "hotel" stated in § 11-2501.5 and the definition of "permanent resident" stated in § 11-2501.8 leads to the conclusion that guests are not permanent residents.

Black's Law Dictionary (6th ed 1990) provides that a "Guest" is "a person who is received and entertained at one's home, club, etc., and who is not a regular member . . . See also Social guest[,]" and provides that a "Social guest" is a "person who goes onto property of another for companionship, diversion and enjoyment of hospitality and is treated as licensee." Furthermore, "[a] guest is a traveler or wayfarer who comes to an inn or hotel for transient accommodation or entertainment and is accepted there for that purpose" (66 NY Jur 2d Hotels, Motels, and Restaurants § 68, quoting *Roberts v Case Hotel Co.*, 106 Misc 481 [App Term 1919]). Therefore, a guest is a transient occupant.⁶

⁶ City Regulations (19 RCNY) § 12-06 (Registration) and § 12-07 (Filing of Returns and Payment of Tax) define "transients" as "guests other than permanent residents." However, there is no express definition of the term "guests" in in Regulation 12-01 (Definitions), or in Code § 11-2501 (Definitions). During the Tax Years at issue, the instructions for the Hotel Tax return (NYC-HTX) defined a "transient occupant" as "a person entitled to

Black's Law Dictionary (6th ed 1990) provides that a transient is someone, who is "[p]assing across . . .; passing with time of short duration;" and thus, she is "not permanent; not lasting; and temporary." That is, a transient is someone who because she "has a home elsewhere . . . [stays] at [a] hotel for a short period in connection with a trip away from home" (*Mann v 125 E. 50th St. Corp.*, 124 Misc 2d 115, 117 [Civ Ct 1984], *affd* 126 Misc 2d 1016 [App Term 1985]).

A guest as a transient occupant is not a tenant (*American Jewish Theatre, Inc. v Roundabout Theatre Co., Inc.*, 203 AD2d 155 [1st Dept 1994]; *Feder v Caliguira*, 8 NY2d 400 [1960]; 1 Robert F. Dolan, *Rasch's Landlord and Tenant, Including Summary Proceedings* § 4:1 [5th ed, June 2023 update]). Determining whether someone is a transient occupant depends on the circumstances and not on any statutory or case law precise test (*Mann* at 116). In general, the party asserting the relation of landlord and tenant has the burden of proving it (Dolan § 4:1).

It is the manifest parties' intention what determines the type of proprietary relationship that exists between the parties and not an instrument's characterization or technical language (*Women's Interart Ctr., Inc. v New York City Econ. Dev. Corp. (EDC)*, 97 AD3d 17 [1st Dept 2012]; *American Jewish Theatre, Inc.*, 203 AD2d 155, 156 quoting *City of New York v Pennsylvania R.R. Co.*, 37 NY2d 298, 300 [1975]; *Statement, Inc. v Pilgrim's Landing, Inc.*, 49 AD2d 28 [4th Dept 1975]; 1 Robert F. Dolan, *Rasch's Landlord and Tenant, Including Summary Proceedings* § 4:1 [3d ed]; Dolan § 4:1). Furthermore, an essential element that differentiates a lease from a license or any other arrangement

use or possess a hotel room who is not a 'permanent resident' as defined above."

involving property rights is the nature of the transfer of absolute control and possession (*Feder* at 404).

The Appellate Division has said that, "no particular words are necessary to constitute a lease" (Dolan § 4:1, quoting *Potter v New York, O. & W. Ry. Co.*, 233 AD 578 [4th Dept 1931], *affd sub nom. Potter v New York, O. & W. R. Co.*, 261 NY 489 [1933]; *Canton Steel Ceiling Co. v Duffy Malt Whisky Co.*, 200 App Div 306 [1ST Dept 1922]) in a situation where "it appears that it was the intention of one party 'to dispossess himself of the premises and of the other to enter and occupy as the former himself had [the] right to do'" (Dolan § 4:1, quoting *Canton Steel* at 308).

Indeed, "the fact that the agreement refers to one of the parties as 'lessee,' or that the parties are described therein as landlord and tenant, or that the agreement is called a lease, does not transform the agreement into a lease if exclusive possession of a specified portion of real property is not granted" (Dolan § 4:1 (citations omitted)). As the court said in *New York World-Tel. Corp. v McGoldrick* (298 NY 11, 12 [1948]), "we must look to the rights [that the agreement] confers and the obligations it imposes to determine . . . the essential attributes" of the relationship between the parties (*see also* Dolan § 4:1).

Specifically, the test distinguishing a lease from other arrangements is the transfer "of absolute possession and control of property to another party for an agreed-upon rental" (*Davis v Dinkins*, 206 AD2d 365, 366 [2d Dept 1994]; *see also Slutzky v Cuomo*, 114 AD2d 116, 118 [3d Dept 1986]; *Riverview Apartments Co. v Golos*, 97 AD2d 917, 918 [3d Dept 1983]; *Feder* at 404). If the exclusive control of the premises has passed to another party, a landlord-tenant relationship is established even when limitations

or reservations restrict the tenant's use of premises (*Women's Interart Ctr.* at 21).

The court in *Chawla v Horch* (70 Misc 2d 290, 292 [Civ Ct, New York County 1972, Kassal, J.]) provided that, "there are many factors to be considered in making the distinction between a guest and a tenant or lodger. Among these are how long the occupant is residing there and for what purpose, whether there is a written or oral lease, what right and duties are set forth therein, what services are provided by the hotel management, whether rent is paid daily, weekly or monthly, what kind of furnishings are in the premises and to whom they belong, whether possessions of the occupant indicate an intention on his part to be there for a temporary or more lasting period."

A lease grants exclusive possession of a specific space to a tenant, subject to the lessor's reserved rights, where a license grants just use or occupancy of the grantor's premises to a licensee (*American Jewish Theatre* at 156). A license can be terminated at will without cause while a lease affords protection from summary eviction (*American Jewish Theatre* at 156).

Real Property Actions and Proceedings Law (RPAPL) § 711 sets forth grounds upon which a summary holdover proceeding may be commenced and provides that "[a] tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer." That is, RPAPL 711 requires the presence of two requirements for a summary proceeding to be commenced: 1. A non-transient occupant; and 2. Occupancy for thirty consecutive days or longer.

Petitioner's submission regarding its holdover proceeding involving a Third Party does not state the court's analysis or conclusion about the specific reasons why the Third Party was considered a non-transient occupant under RPAPL § 711. Therefore, the mere fact that the Petitioner denominated a court proceeding against a Third Party as a holdover proceeding is not controlling in this case to determine that Third Parties constituted tenants occupying the Rentals.

Furthermore, the meaning of a hotel place has evolved with the "changing times" . . . since it "is not one with a fixed and unalterable meaning; in fact, whether a place is or is not a hotel in a given instance may depend on the particular statute involved or the circumstance of the individual case" (*Kraus v Birns*, 39 Misc 2d 562, 566-567 [Sup Ct 1963] (citations omitted)).

For instance, *Dixon v Robbins* (246 NY 169, 173 [1927]) provided that, "[i]t may be that a building is a 'hotel' within the meaning of the statute, though a person cannot receive there all the 'entertainment' he might have obtained in other times at an 'inn.' We may not look solely to old definitions when we determine the meaning of a word which must be applied under changed conditions." Therefore, the type of accommodations included in the term "hotel" and the resulting innkeeper-guest relationships have changed since "the conditions of travel and the nature of accommodations offered to transients have changed in the past century. A more modern interpretation of the term 'hotel' includes any place where 'transient guests are received and lodged'" (*YMCA of Greater N.Y. McBurney Branch v Plotkin*, 136 Misc 2d 950, 952 [Civ Ct, New York County 1987, Friedman, J.] (citations omitted)). These changed traveling conditions even allow "[n]ow, a customer [to] conveniently and efficiently search

. . . websites for a hotel room and reserve it with the click of a button" (*Expedia, Inc. v City of New York Dept. of Fin.*, 22 NY3d 121 [2013]).

Additionally, the existence of a relation of innkeeper and guest is usually a question of fact (*Friedman v Schindler's Prairie House*, 224 App Div 232, 236 [3d Dept 1928], *affd sub nom. Miller v Schindler's Prairie House*, 250 NY 574 [1929]; *De Wolf v. Ford*, 193 NY 397, [1908]). The circumstances may show the presence of an innkeeper, who "is one [holding] itself out to the public as prepared to accommodate all travelers with the necessities for a temporary sojourn" (19 Richard A. Lord, *Williston on Contracts* § 53:80 [4th ed, May 2023 update]). An "innkeeper holds itself out to the public as being able and willing to entertain [and comfort] guests for hire" and "seeks the patronage of transients" (*Matter of Helmsley Enters. v Tax Appeals Trib. State of N.Y.*, 187 AD2d 64, 69 [3d Dept 1993]; *Dixon* at 173).

The case of *People ex rel. Hotel St. George Corp. v Lilly* (45 NYS2d 599, 603 [Sup Ct 1943], *revd* 268 AD 830 [2d Dept 1944], *revd* 293 NY 898 [1944]) described the many factors that are involved in a hotel's sell of its services by stating that, "[a] hotel, for the success of its operations, depends on many factors apart from those which might be considered as mere 'rental' income[,] . . . a hotel sells service. It supplies its guests with fittings and furnishings, with towels and soap, with a maid to take care of their rooms and all other kinds of services that are inseparably associated with hotels. It is a business, the income from which depends upon good will and good management and many other factors apart from those which bear upon the ordinary rental return of real estate."

In this case the Third Parties were transient guests because they were not permanent residents, and a totality of the circumstances show that they had an innkeeper and guest relationship with the Petitioner since they lacked exclusive dominion and control of the Rentals and the Petitioner held itself out to the public as an innkeeper prepared to accommodate transient guests in its Rentals.

The following facts show that the Petitioner did not transfer to the Third Parties exclusive dominion and control over the Rentals and therefore, the Third Parties constituted guests with temporary privileges to the Rentals under a license: regular subleasing of Rentals to Third Parties for periods of less than 180 days at a time; statements in the Agreements or proof of identity attached to the Agreements showing the Third Parties' home addresses located either in states outside of New York or in foreign countries, without any evidence substantiating the Third Parties' intention and/or legal status to permanently reside in the City, which implied that the Third Parties had *animus revertendi* to the home addresses they originally came from; Petitioner's Rentals were fully furnished and equipped with Petitioner's furniture and items such as kitchen cookware, utensils, dishes, linens, sheets, blankets, pillows, towels for the kitchen, hands and bath, face cloths, bathmats, and initial supply of toilet paper, hand soap, and dishwashing liquid; Third Parties' lack of access to security desk, concierge desk, super and doorman services, whenever these services were available in the buildings where the Rentals were located; Third Parties' lack of access to the Rentals' mailboxes; Petitioner's requirement that the Third Parties' mail be delivered in care of Management and at the Management office; Management Company's responsibility for all Subtenant's needs, which was expressly stated in the

Rental Rules; Petitioner's right to charge Third Parties additionally per occurrence if the occupancy of the Rentals exceeded either the agreed number of "subtenants" whose names were listed on the rental application or sublease, and that such excess may lead to their immediate eviction and forfeiture to the rent;⁷ Petitioner's withheld right to move Third Parties to another location for the remainder of the Agreement term and the denial of Third Parties' recovery against Petitioner in that situation; Petitioner's right to access the Rentals upon a one-day notice without requiring prior contact with Third Parties and without obtaining their permission to show the Rentals to prospective future Third Parties; Petitioner's requirement that Third Parties contact Petitioner for all repairs, maintenance and customer service issues, and even for all their needs; Petitioner's requirement that Third Parties report to Petitioner issues involving broken items, missing supplies, sanitation issues, and interrupted services or utilities; billing of Third Parties for their use of gas and/or electric utility services, which shows that these services were not registered in the Third Parties' names; prohibition of parties or social gatherings of people that are not registered to stay in the Rentals; prohibition of overnight stays in the Rentals of people who are not registered to stay in them; requirement that visitors to the Rentals be bound to the terms of the Agreements; assessment to Third Parties of late check-in and check-out fees; prohibition of Third Parties' alterations to the Rentals without Petitioner's prior written consent, which Petitioner may withhold in its sole discretion; prohibition of Third Parties' assignment of Rentals' sublease or subleasing of the Rentals without prior Petitioner's

⁷ *Roberts v Case Hotel Co.* (106 Misc 481, 487 [App Term 1919]) provides that, "[i]t is a matter of general knowledge, of which we may take judicial notice, that innkeepers charge according to persons, as well as according to rooms."

consent, which Petitioner may withhold in its sole discretion; prohibition of Third Parties' unplugging of electronic devices, such as a router or television box, unless instructed by the Management Company; retention of Third Parties' security deposit to offset any expense related to lost or damaged linens, broken items, damage to the furnishings over its normal wear and tear, and late check outs; and denial of refunds, in case of cancellations, to Third Parties for payments already made, unless the cancellations occur due to a municipal agent ending the sublease prior to the conclusion of the term of the Agreement's term.

Furthermore, in this case the following facts show that the Petitioner held itself out to the public as an innkeeper, who was able and willing to offer to transient guests the Rentals' comfort and close proximity to entertainment: the ISTAYNY Website's line stating "Stay Here Go Places," which implies an offer to guests for a transient stay that will involve entertainment provided by the Rentals' close location to the City's major attractions; the ISTAYNY Website's references to: commodious spaces in the Rentals, offering the comforts of home, which implies that the Third Parties' permanent homes were somewhere else; comfortable areas in the Rentals to rest between sightseeing; friendly spaces where Third Parties can share meals with fellow travelers; fully equipped kitchens for convenient stays; a variety of bedding accommodation; sightseeing; and non-boring and hassle-free stays; the references in the ISTAYNY Website, Sublet Website, Agreements, and Rental Rules to the Third Parties' stays, fellow travelers, and a listing of the following amenities: bedding including linens and pillows for beds and sleep sofas, towels, and limited toiletries; the ISTAYNY Website's review for a specific Rental stating that the reviewer

"had a great stay at the [Petitioner's] apartment in the heart of New York City" and that "[t]he apartment [was] clean and [had] everything [someone] would need for a comfortable stay;" references in the Agreements to luggage, guests, booking links, booking charges, flight changes, reservations, free Internet, and one-time cleaning fee; the references in the ISTAYNY Website and in the Agreements to check-in and check-out times; references in the Agreements of the option available to Third Parties to pay for initial maid service; the characterization of the Agreements' submissions as being reservation requests; reference in the February 6, 2017 Agreement to "Airbnb payment amounts and dates;" references in the Sublet Website to Rentals' proximity to Broadway, film and dance studios, and neighborhoods full of charm, culture, history, character, and present influence in the worldwide fashion scene; and the use in Mr. Lachar's Affidavit of the term "stay" to refer to Third Parties' occupancies.

ACCORDINGLY, IT IS CONCLUDED THAT the Petitioner's Rentals, which were subleased by Petitioner to Third Parties for varying periods of less than 180 days at a time, constituted a hotel and, therefore, the charges for their sublease were subject to Hotel Tax. Therefore, the Petitions are denied, the Notice of Determination dated January 14, 2019 is sustained, the Notice of Disallowance dated January 14, 2019 is sustained, and the stipulated tax refund amount is denied to the Petitioner.

DATED: April 2, 2024
New York, New York

/s/

Sandra M. Rodriguez-Diaz
Chief Administrative Law Judge