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FINANCE MEMORANDUM

**Guidance for Businesses Subject to the
New York City Tax on Hotel Occupancy**

This Finance Memorandum is intended to help owners, operators, or managers of hotels located in New York City (collectively to be referred to in this publication as operators) to better understand the tax treatment of various types of occupancies under the New York City Tax on Occupancy of Hotel Rooms. In addition, it aims to clarify the permanent resident exclusion, and to outline how to properly proceed when a customer claims an exemption from tax.

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Background

Recently, the New York State Department of Taxation and Finance issued Publication 848, a guide to New York State and local sales and use taxes administered by the Tax Department as they apply to the operation of a hotel, motel or similar establishment. This Finance Memorandum is intended to provide similar assistance to hotel operators with respect to the New York City Tax on Hotel Occupancy.

Under the New York City Administrative Code, a person required to collect tax includes every operator of a hotel. Therefore, it is important that we clarify the taxable status of the various types of rentals of rooms in the same way that New York State has done for sales tax.

Sales and use taxes cover a broader range of issues than the Tax on Hotel Room Occupancy, so, naturally, there will be certain topics addressed in Publication 848 that have no counterpart in this Memorandum. Significant differences in treatment have been highlighted.

Introduction

Hotel Room Occupancy Tax (“Hotel Tax”) is imposed on the rent for every occupancy of a room in a *hotel* in New York City. However, the Hotel Tax is not imposed (1) on a permanent resident of the hotel; or (2) on rent for any occupancy that is excluded or exempted from tax under the Administrative Code of the City of New York. (See page 6 for detailed information on the permanent resident exclusion and see page 9 for information on exempt occupants). Also, the Hotel Tax is not imposed on the rental of a room that meets the definition of *place of assembly*. See page 3 for the definition of place of assembly. Operators of hotels are required to collect and pay over the Hotel Tax to the New York City Department of Finance.

Definitions

Hotel: A *hotel* is a building or a portion of a building that is regularly used and kept open for the lodging of occupants. A building comes within the definition of a hotel if, among other factors:

- sleeping accommodations are provided for the lodging of paying occupants on a regular basis;
- the typical occupant is a transient or public traveler;
- the relationship between the operator of the establishment and the occupant of the accommodations is that of an innkeeper and guest and not of a landlord and tenant;
- 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 a particular room or rooms; and
- the operator provides maid and linen service or other customary hotel services for its occupants.

The term *hotel* includes the following:

- apartment hotels;
- motels, including motel efficiency units;
- tourist cabins;
- bungalows, furnished apartments and other furnished living units intended for single family use (regardless of whether rentals are for one week or more, and regardless of whether meals, maid service or other common hotel services are provided);
- cottage colonies;
- inns;
- boarding houses or clubs;
- lodging houses;

- rooming houses;
- bed and breakfasts;
- guest houses; and
- similar establishments that are regularly used and kept open for the lodging of occupants.

Note: This interpretation differs from New York State in two ways. First, a facility will not be considered a hotel if rooms, apartments or units are rented to occupants on fewer than three occasions, or for not more than 14 days in the aggregate, during any four consecutive quarters or any 12-month period ending on the last day of February. Second, bungalows, furnished apartments and other furnished living units intended for single family use are considered hotels regardless of whether rentals are for one week or more, or whether meals, maid service or other common hotel services are provided.

Operator: An *operator* is any person operating a hotel in the City of New York, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel. A private club that, as an accommodation to its members, makes rooms available to such members in its own buildings is an *operator* within the meaning of the law.

For taxable periods beginning on or after June 1, 2002, any occupant who sublets or otherwise contracts away the right to use or possession of a room or rooms in a hotel is not an operator.

Hotel Occupancy: *Hotel occupancy* is the use or possession, or the right to the use or possession, of any room or rooms in a hotel. As explained below, *room or rooms in a hotel* does not include a *place of assembly*.

Hotel Occupant: A *hotel occupant* is a person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel under any lease, concession, permit, right to access, license to use, or other agreement.

Room: Any portion of a hotel, whether used for dwelling, commercial or any other purpose, is a *room*, except a bathroom or lavatory, a place of assembly, a store, stand or counter accessible by the public and, a lobby, public dining room or other public room when employed as such. When a lobby, public dining room or other public room is designated by a hotel for exclusive use by an occupant, or specified group of occupants, it will be considered a room. Kitchenettes are also generally considered rooms.

Place of Assembly: *Place of assembly* means an enclosed room or space in which 75 or more persons gather for religious, recreational, educational, political or social purposes, or an outdoor space in which 200 or more persons gather for any of the above reasons.

If a the room has been certified as a *place of assembly* by the Department of Buildings, or if banquet or catering contracts indicate that at a particular function the expected attendance is 75 or more persons, it will be considered a *place of assembly*.

If a room that qualifies as a *place of assembly* is converted to several smaller rooms by any means, such as folding walls or doors, each separate room must qualify independently as a *place of assembly*.

Person: The term *person* includes an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

Rent for Hotel Occupancy: *Rent for hotel occupancy* is the consideration for occupancy of a room or rooms in a hotel, valued in money or otherwise. *Rent for hotel occupancy* includes charges for accommodations, services, facilities, amenities and items that accompany the use and possession of the room or rooms, whether those charges are separately stated or included as one sum in the daily rate for the room or rooms.

Examples of charges for services and accommodations that accompany the use or possession of a room include charges for:

- maid service;
- concierge service;
- towel and linen service;
- providing additional beds, cots or other furnishings for occupants.

Reasonable and separately stated charges not deemed to accompany 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 drink, entertainment, valet and laundry service, theatre ticket service, parking and transportation do not constitute rent.

Computation and Collection of Hotel Tax

The hotel operator must collect Hotel Tax whenever an occupant rents a hotel room unless a particular exclusion or exemption applies and has been appropriately documented. *See discussion regarding “Exempt Occupants” beginning on page 9.*

The amount of Hotel Tax due on rent for hotel occupancy has two distinct components. Rent is taxed at a rate of 5 % of the amount of rent charged for the use or occupancy of a room. In addition, there is a per room charge for each day a room is occupied.

If the rent per day for the room is:	The Per Room Charge is:
Less than \$10	\$0.00
\$10 or more, but less than \$20	\$.50 per day
\$20 or more, but less than \$30	\$1.00 per day
\$30 or more, but less than \$40	\$1.50 per day
\$40 or more	\$2.00 per day

Means of Payment

Credit Cards: When an occupant uses a credit card to pay his or her bill, the credit card company may deduct administrative charges and pay the hotel an amount that represents less than 100% of the occupant's bill. The deduction of the administrative charges by the credit card company does not affect the amount subject to Hotel Tax, or the amount of Hotel Tax due and collectible on the bill.

Gift Certificates: Purchases of gift certificates for a stated dollar amount, whether given away for no consideration or sold, are not subject to Hotel Tax. The gift certificate is the equivalent of money or any other consideration that may be used to pay rent for occupancy of a hotel room. When the gift certificate is used to pay that rent, Hotel Tax is due on the rent normally subject to Hotel Tax.

Coupons: Unlike a gift certificate, a coupon represents a reduction in price offered by either the hotel operator or a third party. If a hotel accepts a coupon that offers an occupant a discount and the hotel will not be reimbursed by a third party for any part of the discount the occupant receives, then the rate of tax is applied to the discounted charge to the occupant. If the hotel is reimbursed by a third party for all or any part of the coupon discount the occupant receives, the amount of the reimbursement is included in the amount of rent subject to Hotel Tax.

Hotel Rewards Points Programs: In a hotel rewards points program original payments for rooms rented in New York City by members earning points are taxed in full even though a portion of the money collected is contributed to central funds set up by the rewards points programs. Credits against those contributions serve to redistribute money that was either actually subject to Hotel Tax or would have been subject to Hotel Tax if the occupancy had been in New York City. We have determined that tax applies to rewards points programs in the following way:

- When a guest who is a program member receives a complimentary room upgrade, the operator must collect Hotel Tax on the value of the original room, but not on the value of the upgrade.
- When a guest who is a program member redeems points for a room, the operator is not required to collect Hotel Tax on the occupancy.

Note: The treatment of Hotel Rewards Points Programs differs substantially from the New York State Sales Tax treatment outlined in Publication 848.

Permanent Resident Exclusion

Hotel Tax is not imposed on the rent for hotel occupancy paid by a permanent resident of a hotel. For Hotel Tax purposes, a *permanent resident* is an occupant of a room or rooms in a hotel for at least 180 consecutive days. The rules regarding consecutive days of occupancy for purposes of determining permanent resident status apply to business entities as well as natural persons.

Note: For New York State Sales Tax purposes, the number of consecutive days required to qualify for the permanent resident exclusion is 90, not 180.

Collection of Tax

When an occupant rents a hotel room or rooms, the hotel operator must collect Hotel Tax on the rent charged regardless of whether the rooms are rented under a contract that provides that the occupant will have the right to occupy the room for 180 consecutive days. When the hotel operator files its Hotel Tax return, the Hotel Tax required to be collected must be reported and paid to the Department of Finance with the return.

Once a hotel occupant becomes a permanent resident of a room or rooms in a hotel, no further Hotel Tax is payable with respect to the room or rooms, provided that the occupant's days of consecutive occupancy are not interrupted. This is so, regardless of whether the right to occupy the room or rooms is granted under separate, successive contracts.

Special Circumstances

Changing Rooms in the Same Hotel: Changing rooms in the same hotel does not interrupt the period of consecutive occupancy.

Example: A hotel occupant occupies a particular room in a hotel for 150 consecutive days, and on the 151st day changes to a different room in the same hotel and occupies the new room for an additional 30 consecutive days. The hotel occupant is a permanent resident of the hotel for purposes of the Hotel Tax.

Changing Hotels: A permanent resident who transfers from one hotel to another hotel, whether or not run by the same operator, loses permanent resident status and must complete the required number of days at the new establishment before 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 to establish permanent residency.

Example: An individual rents a suite of rooms in a hotel located in New York City. After 175 days, the individual moves to a different hotel owned by the same chain. He spends another 175 days at the second hotel. The individual is not a permanent resident of the first hotel because he did not spend at least 180 consecutive days in residence there. He is also not a permanent resident of the second hotel for the same reason. The individual may not aggregate his time spent between the two hotels to meet the 180-consecutive-day criteria for permanent residency.

Multiple Occupants: When a hotel room has more than one occupant that pays or otherwise furnishes consideration for the right to occupy the room, the status of permanent resident is determined individually for each occupant.

Example: An individual rents a room in a hotel. Two weeks later, another person joins the first individual in the same room. Additional rent is charged by the hotel operator for the second occupancy. If both individuals continue to occupy the room, the first individual will become a permanent resident two weeks earlier than the second person, and taxes on the additional rent will continue to be due during the two-week period.

Rooms Rented by A Business: For the purpose of determining whether a business entity qualifies as a permanent resident of a hotel, days that an employee, customer, or client of the business or other person authorized by the business occupies a room for which the business pays rent to the hotel are considered days that the room is occupied by the business, provided that the employee, customer, client, or other person does not reimburse or pay the business for the right to occupy the room.

In addition, days that a room or rooms rented by a business remain unoccupied (and for which no one reimburses the business) constitute days of occupancy by the business.

However, days for which an employee, customer, or client of the business or other person pays or reimburses the business for the right to occupy the room or rooms, whether as part of a package or otherwise, are considered days that the room or rooms are occupied by that person and are not days of occupancy by the business.

Example: A company rents three rooms in a hotel. One of the rooms is occupied by an employee of the company, one room is occupied by a client, and the last room remains unoccupied. The employee does not pay for the right to occupy the room; however, the client compensates the company for use of the room. The days that the room is occupied by the company's employee and the days the third room remains unoccupied are considered to be days of occupancy for the company with respect to such rooms. Accordingly, after 180 consecutive days, the company is considered to be a permanent resident of the two rooms. The days

that the room is occupied by the company's client, however, are not considered to be days that the room is occupied by the company. Consequently, the company cannot become a permanent resident with respect to the room that is occupied by the client.

Temporary Absence: If a hotel occupant who is a permanent resident permits the operator to rent his or her room(s) during the occupant's temporary absence, and the occupant does not have the right to occupy any other room or rooms in the hotel during that absence, the occupant's period of consecutive occupancy in that hotel is considered to have ended. Therefore, when the hotel occupant resumes occupancy in the hotel, he or she will not be considered a permanent resident of the hotel until a new 180-day period of consecutive occupancy is established. The person to whom the room or rooms are rented during the absence of the former permanent resident may establish permanent resident status based on whether such person occupies the room(s) for the requisite number of consecutive days.

Hotel Tax Refundable Once Permanent Resident Status Reached

When 180 consecutive days of occupancy have been reached, the Hotel Tax paid with respect to the 180 days is refundable to the occupant. If an occupant becomes a permanent resident and the hotel operator refunds to the occupant the Hotel Tax previously paid, the hotel operator may take a credit in the amount of the Hotel Tax paid on its next Hotel Tax return. If the hotel operator does not refund the Hotel Tax to the occupant, the occupant may file a claim for refund directly with the Department of Finance.

In determining whether to issue a refund and discontinue collecting Hotel Tax from an occupant who claims to be a permanent resident, the hotel operator may rely upon its books and records to decide whether the claim of permanent residency is valid. However, the Department of Finance recommends that, if the hotel operator cannot rely on its books and records to determine whether a particular occupant is, in fact, a permanent resident, the hotel operator should:

- not issue a refund of the Hotel Tax collected;
- continue to collect the Hotel Tax from the occupant; and
- advise the occupant to request a refund directly from the Department of Finance.

Once the occupant provides documentation that establishes that the Department of Finance granted such a refund request, and the hotel operator has no other reason to conclude that the occupant is not a permanent resident, the hotel operator:

- should discontinue collecting the Hotel Tax from that occupant until it becomes apparent that the occupant is no longer a permanent resident; and

- may refund any Hotel Tax that was paid that was not already refunded by the Department of Finance and take a credit on its tax return in an amount equal to the tax refunded.

Exempt Occupants

Occupancies by certain individuals and organizations are exempt from Hotel Tax imposed on rent for hotel occupancy. These exempt individuals and organizations **include, but are not limited to:**

- New York State and any of its agencies, instrumentalities, public corporations and political subdivisions;
- the United States of America and its agencies and instrumentalities;
- the United Nations and any international organizations of which the United States is a member;
- diplomatic missions and diplomats;
- organizations that have qualified for exempt status under New York State sales tax law (to be referred to hereinafter as section 1116(a)(4) exempt organizations) such as qualifying charities and educational institutions, certain posts or organizations consisting of past or present members of the armed forces of the United States and certain Indian nations or tribes ; and
- organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals.

Verification of the Exemption

New York City and State: The exemption from Hotel Tax for New York State and any of its agencies, instrumentalities, public corporations and political subdivisions applies when an employee or representative of New York State or such other related entities rents a room(s) in a hotel while on official business. For New York State and any of its agencies, instrumentalities, public corporations and political subdivisions to claim an exemption from Hotel Tax the following procedure must be followed:

- an employee or representative staying in the hotel while on official business and paying the hotel bill with personal funds (such as with cash, personal check or personal debit or credit card) must furnish the hotel operator with a properly completed NYS Form ST-129, *Exemption Certificate, Tax on occupancy of hotel rooms*, or NYS Form AC-946, *Tax Exemption Certificate*; or
- where an employee or representative of New York State or any of its related governmental entities makes a direct payment of the hotel bill (such with a state

check or standard voucher), the hotel must make a photocopy of the check or voucher.

The hotel operator must retain the exemption certificate or other documentation to substantiate that the transaction was exempt.

United States Government: The exemption from Hotel Tax for the United States of America and any of its agencies and instrumentalities applies when an employee or representative of the United States or other related entities rents a room(s) in a hotel while on official business. For the United States of America, its agencies, and instrumentalities to claim an exemption from Hotel Tax, the following procedure must be followed:

- an employee or representative, staying in the hotel while on official business and paying the hotel bill with personal funds (such as with cash, personal check, or personal debit or credit card) must furnish the hotel operator with a properly completed NYS Form ST-129, *Exemption Certificate, Tax on occupancy of hotel rooms*; or
- where an employee or representative of the United States or any of its related governmental entities make direct payment of the hotel bill, (such as with a federal check or standard voucher) the hotel must make a photocopy of the check or voucher.

The hotel operator must retain the exemption certificate or other documentation to substantiate that the transaction was exempt.

International Organizations: The exemption from Hotel Tax for the United Nations or any other international organization of which the United States is a member applies when its employees or representatives rent a room(s) in a hotel while on official business. To establish this exemption, the employee or representative must furnish the hotel operator with a properly completed NYS Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*.

Diplomatic Missions: The exemption from Hotel Tax for diplomatic missions applies when its employee or representative or a diplomat rents a room(s) in a hotel and furnishes the operator of the hotel with a copy of a letter of exemption issued by the Department of Finance. To obtain an exemption letter, one must apply to the Department of Finance in writing and include a copy (or other evidence) of the appropriate treaty or reciprocal agreement between the foreign government involved and the United States.

NYS Section 1116(a)(4) Exempt Organizations: The exemption from Hotel Tax applies to any organization determined by New York State Department of Taxation and Finance to be exempt from New York State sales tax under section 1116(a)(4) of the Tax Law. This exemption applies when such an organization, or its employee or representative, occupies the room and the organization is the direct payer of record. The organization must be identified on the hotel bill or invoice along with the individual who occupied the room.

The organization is the direct payer of record when payment is made directly from the funds of the organization, such as with a check from the organization, with the organization's credit card, cash or other funds. If the employee or representative pays the hotel bill with a personal check, personal credit card or other personal funds, the exemption afforded by section 1116(a)(4) organizations does not apply. A signed statement by the employee or representative of the exempt organization that certifies that the organization has paid the hotel bill is sufficient to substantiate direct payment. To establish entitlement to this exemption, the employee or representative must furnish the hotel operator with a properly completed NYS Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*.

For veterans posts or organizations exempt from New York State Sales Tax under Tax law section 1116(a)(5) to establish the exemption from Hotel Tax, the authorized representative who is the hotel occupant must furnish the hotel operator with a properly completed NYS Form ST-119.5, *Exempt Organization Certification for Hotel or Motel Occupancy by Representatives of Veterans Organizations*. Payment may be made with funds of the post or organization, such as with a check from the organization, with the organization's credit card, cash or other funds of the organization, or the authorized representative may use a personal check, credit card or cash to pay the bill.

The exemption from Hotel Tax applies when an Indian nation or tribe exempt from New York State Sales Tax under section 1116(a)(6), or a member, officer, or employee of that nation or tribe, rents a room(s) in a hotel and the exempt Indian nation or tribe is the direct payer of record. The Indian nation or tribe must be identified on the hotel bill or invoice along with the individual who occupied the room. The Indian nation or tribe is the direct payer of record when payment of the hotel bill is made directly from the funds of the nation or tribe, such as with a check of the nation or tribe, with a credit card of the nation or tribe, cash or other funds of the Indian nation or tribe. If the member, officer or employee pays the hotel bill with a personal check, personal credit card or other personal funds, the exemption afforded certain Indian nations and tribes does not apply. To establish this exemption, the member, officer or employee of the Indian nation or tribe must furnish the hotel operator with NYS Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*.

Other Exempt Organizations

An organization (other than a section 1116(a) exempt organization) that believes it qualifies for exemption from Hotel Tax when its employee(s) rents a room(s) in a hotel must furnish the operator of the hotel with a letter of exemption from Hotel Tax issued by the Department of Finance.

To obtain an exemption letter, one must apply to the Department of Finance in writing and include an affidavit stating:

- (1) The type of organization,
- (2) The purposes for which it is organized,

- (3) Its actual activities,
- (4) The source and disposition of its income,
- (5) Whether or not any of its income is credited to surplus or may inure to any private stockholder or individual, and
- (6) Any other facts that may affect its right to exemption.

The application request must also include a copy of the articles of incorporation, or articles of association, as the case may be, a copy of the by-laws of the organization, a recent financial statement, and a copy any letter that exempts the organization from Federal income tax.

Exempt Organizations Operating Hotels

When an organization that has been determined to be exempt by the Department of Finance under Rule Section 12-03(b) or by the New York State Department of Taxation and Finance under section 1116(a)(4) of the Tax Law operates a hotel, or offers rooms for rent, the rent is not subject to Hotel Tax provided that:

- the rooms being rented are located in the same premises in which the organization's other exempt activities are carried out; and
- the operation of the hotel or the rental of the rooms is in furtherance of the organization's exempt activities.

Example: A YMCA qualifying as an exempt organization under section 1116(a)(4) of the Tax Law rents rooms in the building where it carries on its exempt activities and the rental of rooms is in furtherance of those activities. The rooms are rented at the rate of \$20 per day. The rent is not taxable because the YMCA is an exempt organization under section 1116(a)(4) of the Tax Law, the rental of the rooms is an activity carried on in furtherance of its exempt purposes, and the rooms being rented are located on the same premises in which the YMCA's other activities are carried out.

Example: An organization that supports international amateur sports competitions operates a hotel which is open to the general public. The organization's other activities are not carried on in the same building as the hotel, nor is the operation of the hotel in furtherance of the organization's exempt activities. The charges for occupancy at the hotel are subject to Hotel Tax.

Hotels Operated By Colleges and Universities

A dormitory, apartment, house or other facility operated by a school, college or university to provide living quarters for students is not considered to be a hotel, and the charges to students for occupying the residences are not subject to Hotel Tax.

However, rentals of these accommodations to others (such as parents or relatives of students, alumni of the college or university or attendees of seminars and other educational events) are subject to Hotel Tax.

Nontaxable Occupancies

Summer Camps: A camp for children that provides overnight sleeping accommodations and a program of instructions, training or other organized activities that campers are required to pursue under the supervision of counsellors or other supervisory personnel is not a hotel. However, unless otherwise exempted or excluded from tax, if guest facilities are provided for parents or others, Hotel Tax is due on the occupancy charges.

Nursing, Rest or Convalescent Homes: A facility that is registered with or licensed by a New York State governmental agency, whether publicly or privately owned and operated, which accepts persons who require special care on account of age, illness, or mental or physical incapacity, and which provides this special care either by nurses, orderlies or aides, is not considered to be a hotel. Accordingly, the charges for occupancy in this type of facility are not subject to Hotel Tax.

Complimentary Accommodations: When a hotel furnishes complimentary accommodations to individuals for which there is no rent or other consideration paid, the hotel is not required to collect Hotel Tax on the normal cost of the room. **Exception:** Where there is consideration, such as the promise by the occupant of the room to bring future business to the hotel by a tour guide, travel representative or other person, the room is subject to Hotel Tax based on the normal rental price of the room.

Lodging Furnished to Employees for Owner's Convenience: Lodging furnished by a hotel operator to an employee for the hotel operator's convenience are not subject to Hotel Tax provided:

- the employer receives no cash or other consideration for lodging from the employee; and
- the value of the lodging is not income to the employee under federal or New York State income tax laws.

If a hotel operator receives cash or other consideration from an employee for lodging or the value of the lodging is income to the employee for federal or New York State income tax purposes, the lodging is subject to Hotel Tax. For example, a hotel operator receives other consideration if the cost of the lodging is withheld from the employee's wages.

If an employee becomes a permanent resident of the hotel, the hotel operator is no longer required to collect Hotel Tax on the charges to the employee for occupancy, and the

employee is entitled to a refund of Hotel Tax previously paid on charges for occupancy at the hotel.

Events, Packages, and Other Accommodations With Meals

A hotel operating on the American Plan, modified American Plan or other similar plan that combines the provision of hotel occupancy and food services for a single charge must collect Hotel Tax. The total charge must be apportioned between the cost of meals and the rent for occupancy of a room.

Where the price of meals is included in the full day room rent, the operator may use the schedule that follows to determine the percentage of the total charge to be apportioned to meals, and collect Hotel Tax based on the amount allocated to the room.

Schedule for apportioning charges under the American Plan

<u>If total charge includes:</u>	<u>% allocable to</u>	
	<u>Room</u>	<u>Meals</u>
Room, breakfast, lunch, dinner	50%	50%
Room, lunch, dinner	60%	40%
Room, breakfast, dinner	60%	40%
Room, breakfast, lunch	70%	30%
Room, dinner	75%	25%
Room, lunch	85%	15%
Room, breakfast	85%	15%

In the case of an optional meal plan that specifies a separate meal charge, taxable room rent for occupants that elect to participate in the meal plan is determined by subtracting the price of meals from the combined charge.

Exclusive use of a room so that food and/or drink may be provided and served by the operator in the room is a taxable occupancy unless the room qualifies as a place of assembly. If no separate charge for the room is made, 20% of the total charge for the food and/or drink is attributed to the use of the room and taxable as rent.

If a meeting room or similar hotel accommodation that does not constitute a place of assembly is rented, and the hotel provides incidental snacks at break-time, such as coffee, tea, donuts, cookies, candy, and ice cream, the taxable occupancy is considered to include a meal. If a food and beverages charge is not separately stated, reasonable apportionment will be permitted.

Any room that has been designated by a hotel for exclusive use by an occupant, or specified group of occupants, for the purpose of serving of meals or break-time snacks is a room for Hotel Tax purposes. These areas do not include portions of otherwise common hallways or alcoves and hospitality areas unless physically segregated by walls or partitions.

When exclusive use of a room is sold as part of a package transactions that includes other goods or services, such as meals or spa services, and includes “applicable tax” that is not separately stated on the bill, only the portion of the package price attributable to the room occupancy is subject to Hotel Tax. The portion attributable to the occupancy will be the average cost of a similar room in the hotel for the same time period. A hotel may allocate such portion by reference to its books and records provided the allocation is reasonable.

Chart of Transactions Relating to the NYC Hotel Occupancy Tax

The following chart provides a general guide to the taxable or exempt status of occupancies in hotels and similar establishments. The taxable or exempt status is dependent upon whether certain conditions are met. Therefore, explanation and comments have been added to provide guidance in specific situations where required.

Transaction	Taxable? Yes/No/Other	Additional comments/explanation, etc.
Hotel room revenue		
Rent received for occupancy (transient room rental)	Yes	If an occupant becomes a permanent resident after 180 days, the entire period of occupancy becomes nontaxable-See page 6 of this FM.
Guaranteed no-show revenue	Yes	Customer reserves room in advance. Agreement between customer and hotel provides that if customer cancels reservation within a specified time of his/her scheduled arrival customer must pay the full amount of rental for days reserved.
Complimentary rooms	Other -not taxable if facts indicate that no consideration is truly being paid for the room(s)	Examples: <ol style="list-style-type: none"> 1) Complimentary rooms provided by hotel to friends or relatives of management, visiting government officials. 2) Free rooms provided to employees are not subject to tax provided that the value of the lodging is not considered wages for

Transaction	Taxable? Yes/No/Other	Additional comments/explanation, etc.
		federal and state personal income tax purposes. 3) Free rooms provided to vendors, such as musicians, photographers, or contractors who provide services to the hotel, are subject to tax at the normal cost of the room.
Early departure fees	Yes	Considered rent for occupancy
Late departure fees	Yes	Considered rent for occupancy.
Cancellation fees	No	Amount charged when reservation is cancelled; at no time does the customer have the right to occupy the room. Not considered rent for occupancy.
Attrition fees	No	Amount charged because a group did not fulfill their total event commitment; does not constitute rent for occupancy.
Rooms rented to tour operators, meeting planners or others who sell tour packages and meeting packages to their customers which include the use of the rooms by their customers	Yes	Deemed to have been furnished in consideration of efforts to bring future business to hotel and taxable at normal rental charge for room.
Pet charges	Yes	Rent for occupancy whether or not separately stated
Pet clean-up fees	Yes	Rent for occupancy whether or not separately stated.
Child care charges	No	Provided by hotel employees or by unrelated third party.
Rollaway bed charges	Yes	Taxable as rent for occupancy.
Refrigerator charges	Yes	Taxable as rent for occupancy.
Safe charges	Other- Maybe	Taxable as rent for occupancy if safe located within room. Not taxable if safe located elsewhere in hotel, such as behind front desk.
Damage fees	Yes	Considered incidental part of rent for occupancy or a charge for the maintenance/repair of the damaged property.

Transaction	Taxable? Yes/No/Other	Additional comments/explanation, etc.
Meeting/Banquet Room Revenue		
Meeting room revenue	Other- Maybe	Meeting rooms exempt if they meet the definition of <i>place of assembly</i> , page 3 of this FM
Meeting room revenue (meal or break-time food served)	Other- Partly Maybe	If not exempt as a <i>place of assembly</i> , total charges will be apportioned between food and rent.
Banquet room revenue	Other- Maybe	Banquet rooms exempt if they meet the definition of <i>place of assembly</i> , page 3 of this FM
Banquet room revenue (meal or break-time food served)	Other- Partly Maybe	If not, total charges will be apportioned between food and rent.
Banquet room revenue (room subdivided)	Other- Partly Maybe	Smaller units taxable unless each individually exempt as a <i>place of assembly</i> .
Cancellation fees: banquet rooms	No	Liquidated damages because an event was cancelled. Damages may cover lost revenue not merely room rental, but from food that was ordered but thrown away, party decorations etc.
Attrition fees: banquet rooms	No	Fee charged because group did not fulfill their total commitment (example: an event booked for 200 people but only 150 attended. Penalty is charged for 50 non-attendees.)