

Instructions for Form NYC-HTXB

NEW YORK CITY DEPARTMENT OF FINANCE



Hotel Tax Return For Use by Small Facility Operators Only

GENERAL INFORMATION

IMPOSITION OF TAX

The New York City Hotel Room Occupancy Tax is separate from and in addition to sales taxes imposed by the State of New York and the City of New York on the occupancy of hotel rooms and consists of a percentage of the rent plus a flat amount per day. This tax must be collected for every occupancy of each room in a taxable facility in the City of New York except as provided below.

HIGHLIGHTS OF RECENT LAW CHANGE

Effective for all occupancies occurring on or after March 1, 2009 and before December 1, 2011, the additional tax (Forms NYC HTX and NYC HTXB, schedule A, line 5) is 5.875% of the rent or charge per day. The fixed rate tax of 50 cents up to \$2.00 per room per day (Forms NYC HTX and NYC HTXB, Schedule A, lines 1 through 4) remains unchanged. See Int. No. 879-A of the Local Laws of 2008.

HIGHLIGHTS OF RECENT RULE CHANGES

The Department of Finance recently adopted a number of new rules affecting the application of the New York City Hotel Room Occupancy Tax.

REPEAL OF "BUNGALOW" EXCEPTION:

Effective December 1, 2003, rentals to occupants, other than permanent residents, of furnished apartments or other furnished living units intended for single family use are subject to the tax regardless of whether the rental is for periods of one week or more and regardless of whether meals, maid service or other common hotel services are provided. For further information, see Title 19 Rules of the City of New York §12-01, definition of "hotel" effective November 29, 2003.

DE MINIMIS ACTIVITY RULE:

Effective September 1, 2004, a facility will not be considered a hotel (see definition below) required to collect the tax if, during any four consecutive tax quarters or any twelve-month period ending on the last day of February, rooms, apartments or units are rented to occupants on fewer than three occasions or for not more than 14 days in the aggregate. Rentals of rooms in a single building will be aggregated and rentals of apartments and living units in one or more buildings owned or leased by the same operator will be aggregated. Rentals under a single contract for one or more consecutive days will be considered a single occasion, however, if a single contract provides for a rental for non-consecutive days, each period of consecutive days will be considered a single occasion. If a room, apartment or unit is sublet or the right to occupy the room, apartment or unit is sold or subcontracted to another person, each separate sublet or subcontract for a period of consecutive days will be considered a separate occasion. Rentals to permanent residents (see definition below) will not be included in the number of occasions or days of rentals for this purpose. Once a facility is required to register and collect the tax because it exceeds the de minimis thresholds

during a period, it must continue to collect the tax even if it falls below the threshold in a later period. However, if a facility, once registered, falls below the threshold for a period of three consecutive years, the facility is not considered a hotel and is not required to file. For further information, see Title 19 Rules of the City of New York §12-01, definition of "hotel", effective February 19, 2005.

CHANGE IN FILING REQUIREMENTS FOR SMALL OPERATORS:

Effective for periods beginning on and after September 1, 2004, operators of hotels having fewer than ten (10) rooms and operators of fewer than ten (10) furnished apartments or furnished living units may file their returns on this form on an annual basis covering the twelve-month period ending on the last day of February. That return will be due on the subsequent March 20 each year. If you have ten (10) or more rooms or ten (10) or more apartments, you may not use this form. Use Form NYC-HTX. For further information, see Title 19 Rules of the City of New York §§12-06 and 12-07, effective February 19, 2005.

RESELLERS OF ROOMS:

Where rooms are sublet or resold by someone other than the original operator, for periods beginning on and after June 1, 2002, the tax will apply to the occupancy of a room by the original occupant of the room even if that person sublets or resells the room. The tax generally will apply to the room rent payable by the original occupant. These rules also clarified the definition of a permanent resident (see below) to provide that, in determining the number of days of consecutive occupancy, any day on which a person occupying the room sublets or otherwise contracts away that person's right to occupy the room will not be taken into account. For further information, see Title 19 Rules of the City of New York §12-01 effective July 25, 2001.

NOTE:

Effective for periods beginning on and after April 1, 2005, New York State has enacted a Convention Center Hotel Unit Fee of \$1.50 per hotel unit per day. The fee is required to be collected by hotels within the City. **This fee is not part of the New York City Hotel Room Occupancy Tax.** The new fee is to be collected and administered by the New York State Department of Taxation & Finance in the same manner as the Sales Tax on hotel rooms. Additional information is available on their website at www.nystax.gov

DEFINITIONS

- Rent

The consideration received for occupancy valued in money whether received in money or otherwise, including receipts, cash, credits, and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deductions.

- Operator

An "operator" is any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee,

referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals 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 operating the facility.

- Hotel

For purposes of the tax, "hotel" is any building or portion thereof that is regularly used and kept open for the lodging of occupants. The term "hotel" includes apartment hotels, motels, boarding houses, lodging houses and clubs, whether or not meals are served. The rental to occupants, other than permanent residents, of furnished apartments or other furnished living units to intended for single-family use is considered a hotel. A hotel includes making one or more rooms in a property owned by an individual available to guests for compensation on a regular basis and also includes renting to guests more than one room in a dwelling place ordinarily occupied by a person as his or her residence. See "Highlights of Recent Rule Changes" above.

- Occupancy

"Occupancy" is 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. There is an "occupancy" of a room whether or not the person entitled to the use or possession of the room actually uses or possesses it.

- Permanent Resident

Except as otherwise provided below, a person is a "permanent resident" as of a given date if he/she has had the right to occupy a room or rooms in a particular hotel for the 180 consecutive days preceding that date. See, "Highlights of Recent Rule Changes - Resellers of Rooms" above for recent changes related to the definition of a permanent resident. A person who enters into an agreement for occupancy for 180 consecutive days or more does not become a "permanent resident" under the law until he/she has been an occupant for 180 consecutive days, and the operator is liable for the collection of the tax until that occupancy for 180 consecutive days has been completed. However, an occupant can obtain permanent resident status prior to completing 180 days of consecutive occupancy by requesting a lease from the hotel operator pursuant to the provisions of Section 2522.5 of the rent stabilization regulations promulgated by the New York State Division of Housing and Community Renewal. Where the occupant has requested such a lease, the hotel operator should not collect the tax for any day, starting on the date the lease was requested, that falls within a period of continuous occupancy by the occupant. However, if the occupant does not complete 180 days of continuous occupancy, any taxes not previously

collected become immediately due and payable and are to be collected by the hotel operator.

- Transient Occupant

A "transient occupant" is a person entitled to use or possess a hotel room who is not a "permanent resident" as defined above.

- Room

A "room" includes any portion of a hotel, other than a bathroom or lavatory, whether used for dwelling, commercial or any other purposes, except: (1) A place of assembly as defined in the NYC Administrative Code (See Title 19 Rules of the City of New York Section 12-01); (2) A store, stand or counter to which access is had directly from public thoroughfares or street or mezzanine lobbies; (3) A lobby, public dining room or other public room used for a private purpose. The term "room" also includes a kitchenette, provided that (a) it is a walk-in area, enclosed by walls, with one or more doorways, archways, or other openings, (b) it is supplied with a cooking appliance, including, but not limited to, a range, microwave or convection oven, or hot plate, and (c) it contains at least one item from each of two of the following three categories: (1) a sink with running water, or dishwasher; (2) a refrigerator; (3) a cabinet, counter top, or table.

REGISTRATION

Every operator of a hotel must file with the Department of Finance a certificate of registration on the form prescribed by the Department of Finance for the purpose of obtaining a certificate of authority empowering the operator to collect the tax. In the case of operators commencing business or opening new hotels, a certificate of registration must be filed within three days after the commencement or opening. Every operator who operates more than one hotel is required to obtain a certificate of authority for each establishment. An operator of furnished apartments or other furnished living units intended for single-family use subject to the tax and located at multiple addresses may request a single certificate of authority for all such apartments or living units by attaching to the registration form a schedule showing each apartment and its street address. The certificate of authority must be prominently displayed by the operator in a manner that it may be seen and come to the notice of all occupants and persons seeking occupancy.

Exemption of Nonprofit Operators. An organization organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, is exempt from the obligation to register and collect the tax as a hotel operator if it carries on its nonprofit activities in premises in which, as part of the activities for which it was organized, it operates a hotel. To obtain the above exemption as a hotel operator, a nonprofit organization must submit a request for exemption containing the following:

1. a copy of the organization's articles of incorporation or association,
2. a copy of its by-laws,

3. a statement of receipts and disbursements for its most recent year,
4. a statement of its assets and liabilities for its most recent year,
5. a copy of its exemption from federal income tax issued by the Internal Revenue Service,
6. copies of its federal, state, and City tax returns for the most recent three years, and
7. an affidavit of an officer of the organization stating the following:
 - a. type of organization
 - b. purpose for which it was organized
 - c. a description of its actual activities
 - d. source and disposition of its funds
 - e. a statement that none of its net earnings is credited to surplus nor may inure to the benefit of any shareholder, member or individual, and
 - f. such other facts as may be relevant to its application.

The application should be submitted to:

**New York City Dept. of Finance
Exemption Processing Section
59 Maiden Lane, 20th Floor
New York, NY 10038**

WHEN AND WHERE TO FILE

Every operator as defined above is required to file returns. Effective for periods beginning on and after September 1, 2004, operators of hotels having fewer than ten (10) rooms and operators of fewer than ten (10) furnished apartments or furnished living units may file their returns on an annual basis covering the twelve-month period ending on the last day of February. That return will be due on the subsequent March 20 each year. An operator of furnished apartments or other furnished living units intended for single-family use subject to the tax and located at multiple addresses but registered under a single certificate should file a single return covering all such apartments or living units by attaching to the return a schedule showing each apartment and its street address.

The return should be mailed to the following address:

**NYC Department of Finance
P. O. Box 5160
Kingston, NY 12402-5160**

An operator who terminates the business or falls below the de minimis threshold for three consecutive years (see, "Highlights of Recent Rule Changes") must file a final return within 20 days from the date the business was terminated. If the business was sold, the purchaser must also file a return covering the period beginning on the date of purchase.

Quarterly returns must be filed for each establishment not eligible for annual filing for each three-month period ending on the last days of August, November, February and May of each tax year and must be filed within 20 days of the end of the period they cover. **If you have ten (10) or more rooms or ten (10) or more apartments,**

you may not use this form. Use Form NYC-HTX.

ELECTRONIC FILING

Register for electronic filing. It is an easy, secure and convenient way to file and pay the Hotel Tax on-line. For more information log on to nyc.gov/nycefile

COMPUTATION OF TAX

- 1) This tax must be paid for every occupancy of each room in a hotel in the City of New York at 5% of the rent charged plus an amount per room per day based on the following table:

If the rent per full day for the room is:	The tax per day is:
\$10 or more, but less than \$20.....	\$ 0.50
\$20 or more, but less than \$30.....	\$ 1.00
\$30 or more, but less than \$40.....	\$ 1.50
\$40 or more.....	\$ 2.00

In using the table, where an amount of rent is charged for more than one room, whether or not a suite, if such rooms are not otherwise rented separately, the daily rent per room is to be determined by dividing the entire rent by the number of rooms for which the charge is made (see "room" defined above). For example, if the entire charge for a suite of three rooms is \$90 per day, the charge for each room is considered to be \$30. Beginning on or after December 1, 1994 and before March 1, 2009, the per room tax is \$1.50 plus an additional 5% of the rent. Beginning on or after March 1, 2009 and before December 1, 2011, the per room tax remains at \$1.50 but the additional tax rate has been raised to 5.875% of the rent. (See instructions for Line 5).

- 2) Where a room occupancy is for less than a full day and a person pays less than the rent for a full day, the tax is the same amount as would be due for a full day at the rate for a full day.
- 3) Where the rent covers a term longer than one day, the rent per day is computed by dividing the rent for the term by the total number of days in the term.
- 4) Where the price of meals (meal plan not optional) is included in the full day room rent, the full day room rent is to be adjusted in accordance with the following schedule.

If the total charge includes:	The portion of the total charges subject to tax is:
Breakfast, Lunch, Dinner	50 %
Lunch, Dinner	60 %
Breakfast, Dinner	60 %
Breakfast, Lunch	70 %
Dinner	75 %
Lunch	85 %
Breakfast	85 %

- 5) Where the price of meals (optional meal plan) is included in the full day room rent, the full day room rent is to be reduced by the price of the meals.
- 6) Where the exclusive use of a room is secured by a person as an incident to the furnishing by the

operator of food and/or drink to be served in such room, the use constitutes a taxable occupancy, and any separate charge for rent for the occupancy is subject to tax. If no separate charge for the room is made to the person, 20% of the total charge to the guests for the food and/or drink is attributable to the use of the room by the person, and taxable as rent. If the charge to the guests is less than a minimum amount guaranteed by such person, 20% of the guaranteed minimum shall be attributable to the use of the room by such person and is taxable as rent.

EXEMPTIONS

The following persons are exempt from payment of the tax as hotel occupants: (a) permanent resident as defined above, and (b) organizations and associations exempt from the State and City Sales Tax on hotel room rents as described in Tax Law section 1116(a), including the federal government, the State and City of New York, or any agency thereof, and certain nonprofit organizations. A person or entity claiming exemption other than as a permanent resident must submit to the hotel operator a New York State Sales Tax exemption certificate to obtain this exemption.

Preparer Authorization: If you want to allow the Department of Finance to discuss your return with the paid preparer who signed it, you must check the "yes" box in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Preparer's Use Only" section of your return. It does not apply to the firm, if any, shown in that section. By checking the "Yes" box, you are authorizing the Department of Finance to call the preparer to answer any questions that may arise during the processing of your return. Also, you are authorizing the preparer to:

- Give the Department any information missing from your return,
- Call the Department for information about the processing of your return or the status of your refund or payment(s), and
- Respond to certain notices that you have shared with the preparer about math errors, offsets, and return preparation. The notices will not be sent to the preparer.

You are not authorizing the preparer to receive any refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the Department. The authorization cannot be revoked, however, the authorization will automatically expire twelve (12) months after the due date (without regard to any extensions) for filing this return. Failure to check the box will be deemed a denial of authority.

SPECIFIC INSTRUCTIONS

LINES b AND c -

For operators of furnished apartments or other furnished living units located at different street

addresses, enter on this line and line c the number of rooms in all locations.

LINE d -

If you are an operator renting out apartments or living units under a single certificate of authority in more than one building attach an addendum to this form showing the name, if any, and the address of each building in which you rent out apartments or living units under a single certificate of authority on a transient basis and the number of rooms at each location.

SCHEDULE A - COMPUTATION OF TAX

LINE A - PAYMENT

Enter the amount of payment remitted with this return.

LINES 1 TO 4 - RENT CATEGORIES

Enter in the proper lines for each rental category the total number of taxable occupancies of rooms or apartments during the period covered by the return.

LINE 5 - ADDITIONAL TAX DUE

Enter the total amount of rents or charges for taxable occupancies during this tax period. Multiply this by the tax rate, which for periods on or after Dec. 1, 1994 and before March 1, 2009 is 5%. Effective for all occupancies occurring on or after March 1, 2009 and before December 1, 2011, the applicable tax rate is 5.875%.

LINE 7 - TOTAL TAX COLLECTED

Enter the amount of tax collected or required to be collected according to your books and records.

LINE 9 - REFUNDS AND/OR CREDITS

Enter the sum of the following and attach a schedule to the return and explain on a rider:

- a) any amount of tax paid to the Department of Finance in the preceding period and refunded in the current period to a person who has become a permanent resident;
- b) any amount of tax paid to the Department of Finance with respect to rent that has been determined to be worthless, but only if the refund is requested within one year from the date of payment; and
- c) any other credit allowable by law or regulation, provided a detailed explanation is attached to the return.

LINE 16 - INTEREST

If the tax is not paid on or before the due date, interest must be paid on the amount of the underpayment from the due date to the date paid. For information as to the applicable rate of interest call the Customer Assistance number given under that heading. Interest amounting to less than \$1 need not be paid.

LINE 17 - PENALTY

- a) If you fail to file a return when due, add to the tax (less any payments made on or before the due date) 5% for each month or partial month the form is late, up to 25%, unless the failure is due to reasonable cause.

- b) If the return is filed more than 60 days late, the above late filing penalty will not be less than the lesser of 1) \$100 or 2) 100% of the amount required to be shown on the return less any payment or credits claimed.

- c) If you fail to pay the tax shown on the return by the prescribed filing date, add to the tax (less any payments made) 1/2% for each month or partial month the payment is late up to 25%, unless the failure is due to reasonable cause.
- d) The total of the additional charges in (a) and (c) may not exceed 5% for any one month except as provided in (b).

If you claim not to be liable for these additional charges, a statement in support of your claim should be attached to the return.

Additional penalties may be imposed on any underpayment of the tax due to negligence or fraud. Officers of a corporate operator and partners in a partnership that is an operator are personally liable for the tax collected or required to be collected by the corporation or partnership and are subject to the above penalties.

LINE 18 - TOTAL REMITTANCE DUE

Add lines 13, 16 and 17 to obtain the total amount due. Make your check payable to the order of:

NYC Department of Finance

CUSTOMER ASSISTANCE

For further information, call 311, if calling from within the five boroughs of the City of New York, Monday through Friday, between the hours of 9:00 am and 5:00 pm. If calling from outside the five boroughs, call 212-NEW-YORK (212-639-9675).

PRIVACY ACT NOTIFICATION

The Federal Privacy Act of 1974, as amended, requires agencies requesting Social Security Numbers to inform individuals from whom they seek this information as to whether compliance with the request is voluntary or mandatory, why the request is being made and how the information will be used. The disclosure of Social Security Numbers for taxpayers is mandatory and is required by section 11-102.1 of the Administrative Code of the City of New York. Such numbers disclosed on any report or return are requested for tax administration purposes and will be used to facilitate the processing of tax returns and to establish and maintain a uniform system for identifying taxpayers who are or may be subject to taxes administered and collected by the Department of Finance, and, as may be required by law, or when the taxpayer gives written authorization to the Department of Finance for another department, person, agency or entity to have access (limited or otherwise) to the information contained in his or her return.