

THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

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NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York New York City Charter and section 11-2511(1) of the Administrative Code of the City of New York, I hereby promulgate the within amendment to the Rules Relating to the New York City Hotel Room Occupancy Tax. These rules were published in proposed form for public comment on August 20, 2003 and a hearing was held on September 22, 2003.

AMENDMENTS TO RULES HOTEL ROOM OCCUPANCY TAX

Section 1. The definition of hotel in section 12-01 of Title 19 of the Compilation of the Rules of the City of New York Relating to the Hotel Room Occupancy Tax is amended to read as follows:

Hotel. A "hotel" is a building or portion of a building [which] that is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel, boarding house, bed and breakfast, or club, whether or not meals are served.

An "apartment hotel" is a building or portion of it wherein apartments are rented to guests for fixed periods of time, either furnished or unfurnished. The term "boarding house" includes rooming houses, furnished-room houses and lodging houses[, but does not include a room in a dwelling place ordinarily occupied by a person as his own dwelling which is rented by him to another]. The term "bed and breakfast" includes a dwelling place ordinarily occupied by a person as his or her own dwelling in which more than one room is regularly used and kept open by such person for the lodging of guests for consideration regardless of whether services such as meals, telephone or linen services are provided. The term "club" includes a residence club, as well as private clubs.

To illustrate:

Illustration (i): Individual A owns and lives in a three-bedroom house in New York City. Individual A rents one of the bedrooms to guests from time to time by listing the room with a bed and breakfast listing service. At no time during the year does A rent or offer to rent more than one room to guests. The rental of one room by A is not subject to tax.

Illustration (ii): The facts are the same as in illustration (i) except that A lists two of the three bedrooms or one bedroom and the living room, in his apartment for rental to guests. A's rental of rooms in the apartment is subject to tax.

The term "hotel" also includes 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, except 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.

To illustrate:

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.

The term "hotel" does not include the following:

(1) A nursing home, rest home, convalescent home, maternity home for expectant mothers, residence or home for adults or mentally disabled persons which is registered with the Department of Social Services or Department of Mental Hygiene, whether publicly or privately owned and operated, which accepts as patients persons who require special care on account of age, illness, mental or physical condition or the like, and [provide] provides this special care either by nurses, orderlies or aides.

To illustrate:

Illustration [(i)](iv): A senior citizen's lodging facility which only furnishes hotel facilities and services and does not furnish services or special care provided by attendants, etc., is a hotel.

Illustration (ii)(v): A maternity home or residence for expectant unwed mothers which is registered with the Department of Social Services and provides care and service for mothers to be. Such care and service includes maintaining a residence, social services, medical care, and arranging for delivery at a local hospital. This facility is not a hotel.

(2) A summer camp for children which provides a program of instruction or training which the campers are required to pursue under the supervision of counselors is not a hotel. Where guest facilities are provided for parents or others the tax applies to such facilities.

(3) A college dormitory or apartment belonging to a school, college, or university in which its students reside is not a hotel. Where facilities are provided for parents, alumni or others the tax applies to such facilities.

[(4) A bungalow which is a furnished living unit limited to single family occupancy is not a hotel. Therefore the rents for the occupancy of such bungalows are not taxable, provided:

(i) No maid, food, or other common hotel services such as entertainment or planned activities are provided, and

(ii) the rental is for at least one week.

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.]

BASIS AND PURPOSE OF AMENDMENTS

These amendments affect the portion of the Rules Relating to the New York City Hotel Room Occupancy Tax governing the definition of a hotel.

These amendments are intended to make it clear that the New York City Hotel Room Occupancy Tax applies to the renting of more than one room in a personal dwelling for use by guests, including but not limited to operations commonly referred to as "bed and breakfasts". These amendments are consistent with long-standing pronouncements applying sales taxes to bed and breakfasts. *See*, TSB-M-92(7)S, December 7, 1992, and TSB-A-87(29)S (August 31, 1987).

These amendments also repeal on a prospective basis the exemption from the tax for certain rentals of bungalows. Bungalows of the type originally addressed by the exemption no longer exist in the City of New York. However, apartment owners are taking advantage of the exception to rent their apartments to guests on a transient basis free of tax. The repeal of the bungalow exemption is intended to subject these apartment rentals to the tax.

These amendments also make certain nonsubstantive changes.

/S/ Martha E. Stark
Commissioner of Finance