



FINANCE
NEW • YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE
nyc.gov/finance

July 27, 2007

RE: Letter Ruling Request
Commercial Rent or Occupancy Tax
Anonymous
FLR No. 074865-007

Dear Mr. :

This is in response to your letter dated March 22, 2007 requesting a ruling as to whether an operator (the “Operator”) of a large hotel located below 96th Street in Manhattan (the “Hotel”) may apply rents received on all the Hotel’s guest rooms toward reducing base rent for purposes of the New York City Commercial Rent or Occupancy Tax (“CRT”).

FACTS

The facts presented are as follows:

The Operator operates the Hotel located below 96th Street in Manhattan. The Hotel premises are owned by a separate entity (the “Owner”) and the Operator leases the premises from the Owner. The Operator rents the majority of the Hotel’s rooms on a short-term, transient basis (i.e. one or two nights), with a smaller portion rented for longer, residential stays (i.e. weeks or months). As a commercial tenant, the Operator is subject to the CRT. The Operator is seeking a ruling to confirm that for purposes of calculating its CRT liability, the Operator may apply rents it receives on all the Hotel’s guest rooms toward reducing base rent.

ISSUE

Whether for purposes of calculating its CRT liability, the Operator may reduce its base rent by the amount it receives as rent from the guests staying at the Hotel regardless of the length of stay.

CONCLUSION

The Operator may reduce its base rent by the amounts it receives as rent from the guests staying at the Hotel, irrespective of the length of the guests’ stay.

DISCUSSION

Section 11-702 of the Administrative Code of the City of New York (the “Code”) imposes the CRT on the base rent paid to occupy taxable premises. Under section 11-701(5) of the Code, “taxable premises” are any premises occupied or used “for the purpose of carrying on or exercising any trade, business, profession, vocation or commercial activity, including any premises so used even though it is used solely for the purpose of renting, or granting the right to occupy or use, the same premises in whole or in part to tenants....”

Code section 11-701 allows a tenant to reduce its base rent by amounts received from subtenants in certain circumstances. It is clear that the subtenant deduction relates to premises that are being used for commercial purposes and, therefore, constitute taxable premises for purposes of the CRT. However, in addition, the reduction is allowed in certain circumstances where the premises are not taxable premises. One such case is where the premises is used by the tenant as lodging or residential premises (including such residential premises in hotels, apartment hotels or lodging houses as defined in former title V of chapter forty-six of the Code). Code Section 11-701(7)(ii). The following illustration is contained in the Rules of the City of New York (“RCNY”) with respect to the CRT:

The owner of a hotel leases the hotel to an operating company, which pays the owner an agreed rent. The operating company rents rooms in the hotel to residential guests. The operating company’s base rent consists of the rent paid by it to the owner, less the amounts received or due to it from the guests. 19 RCNY §7-01 “Base Rent” (3), Example (6).

Pursuant to the Code and the RCNY provision quoted above, it is our opinion that a subtenant deduction is permitted from gross rents paid for all rents received from renting rooms to guests whether the rentals are short term or long term.¹

Very truly yours,

Dara Jaffee
Assistant Commissioner
Legal Affairs

CS:ec

¹ This conclusion is also supported by Section 7-01 “Base Rent”(5) of Title 19 of the RCNY which provides for a reduction in base rent for rents received for premises subject to the City’s Tax on Occupancy of Hotel Rooms (“Hotel Room Occupancy Tax”) or the New York City Sales Tax imposed pursuant to Chapter 25 and Chapter 20, respectively, of Title 11 of the Code. However, because certain long term rentals of hotel rooms are not subject to the Hotel Room Occupancy tax, the Code and Rule sections cited above are more inclusive.