NEW YORK CITY TAX APPEALS TRIBUNAL

In the Matter of	:	DECISION
USA STAY, LLC	:	TAT (E) 19-2 (HO) TAT (E) 19-3 (HO)
Petitioner.	:	

USA Stay, LLC (Petitioner) filed an Exception to a Determination of the Chief Administrative Law Judge (CALJ) dated April 2, 2024 (CALJ Determination), which sustained the Notice of Disallowance issued by the New York City Department of Finance (Department), dated January 14, 2019, which denied in full Petitioner's refund claims of New York City Hotel Room Occupancy Tax (HROT) for the tax periods ended August 31, 2014, August 31, 2016 and November 30, 2016 (Tax Years) totaling $196,533.64, and sustained the Notice of Determination issued by the Department, dated January 14, 2019, which asserted additional HROT for the Tax Years of $83,677.77 plus applicable interest.[1]

Petitioner was represented by Roger S. Blane, Esq., of Hutton Solomon & Blane PC. Respondent was represented by Daniel Joy, Esq., Senior Counsel, New York City Law Department. The parties submitted Joint Stipulations of Fact and Exhibits and

[1] Except as otherwise noted, the CALJ's Findings of Fact, although paraphrased, amplified and clarified herein, generally are adopted for purposes of this Decision. Certain Findings of Fact not necessary to this Decision have not been restated and can be found in the CALJ Determination.

consented to have this matter determined on submission without the need for appearance at a hearing, under the Rules of Practice and Procedure of the New York City Tax Appeals Tribunal (Tribunal Rules) 20 RCNY §1-09(f). Oral argument before the Tribunal was held on June 25, 2025.

Petitioner, a Delaware limited liability company, leased residential apartments[2] from their owners.[3] Petitioner offers these residential apartments, advertised through various internet websites such as www.iStayNY.com and www.Sublet.com, to individuals (or groups of individuals) fully furnished and equipped with kitchen cookware, utensils and dishes as well as linens and towels, appliances, free internet and an initial supply of toilet paper, hand soap and dishwashing liquid.[4] Petitioner entered into written agreements with these individuals that set out specific terms, conditions and restrictions relating to the occupancy of these residential apartments.[5] Petitioner offered these residential apartments, which were located in areas of New York City such as Times Square, Upper East Side, Soho and Hell's Kitchen, for periods of less than 180 days as well as for periods of more than 180 days.[6] The issue before us concerns only

[2] The written agreements, discussed *infra*, use the term "apartment" and "unit" interchangeably. We use those terms interchangeably in this Decision.
[3] The owners were owners of cooperative and condominium apartments and landlords of rental apartment buildings. Stipulation of Facts dated February 16, 2021, #3 and #4; Supp. Stipulation of Facts dated November 27, 2023, Exhibit 1.
[4] Stipulation of Facts dated February 16, 2021, #1, #5, #6, and Exhibit 2; Supp. Stipulation of Facts dated November 27, 2023, Exhibit 1.
[5] Stipulation of Facts dated February 16, 2021, Exhibit 2. Exhibit 2 sets forth examples of the written agreements entered into relating to the period June 1, 2014, through August 31, 2017. Stipulation of Facts dated February 16, 2021, #3.
[6] Stipulation of Facts dated February 16, 2021, #5.

agreements of less than 180 days, and all the sample agreements placed in evidence are for less than 180 days.[7]

The written agreements Petitioner entered into with the occupants of the units were titled "Monthly Sublease Agreement" and referred to the occupants as "Subtenants,"[8] and in some provisions, alternatively, as "Guests".[9] Unlike a typical residential apartment lease or sublease, however, the written agreements did not specify the conditions for moving in or moving out of the residential apartment but, similar to a hotel, instead described the conditions for the subtenant to "Check In" and "Check Out".[10] The written agreements also stated that Petitioner's "Management Company," with a physical location in Manhattan and a dedicated telephone number, "is responsible for all of Subtenant's needs".[11]

The written agreements state that "[i]f the building in which the [unit] is located has a security desk, concierge desk, super, or doorman, such services are <u>not provided</u> to the Subtenant. The Subtenant must call the Management's Office for all of Subtenant's needs".[12] For instance, the written agreements provide that if a "[g]uest has booked or otherwise agreed to move from one property to another during a continuous stay…and

[7] Stipulation of Facts dated February 16, 2021, Exhibit 2.
[8] Stipulation of Facts dated February 16, 2021, Exhibit 2.
[9] *See*, *e.g.*, Stipulation of Facts dated February 16, 2021, Exhibit 2, paragraph 1 of each of the included agreements; paragraph 16 on pages 69, 78,83, 89; as well as in other provisions described herein.
[10] Stipulation of Facts dated February 16, 2021, Exhibit 2.
[11] *Id*. For example, *see id*, at 9, 12, 22, 25, 36, 39, 49, 52, 65, 72 and 73; *see also* Exhibit 2 generally.
[12] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 10, 12, 25, 37, 39, 50, 63, 72 and 73. The parties stipulated that Petitioner did not provide occupants with any of the following: food, maid service, cleaning service, room service, entertainment, change of towels and linens, replacement of toiletries, planned activities or concierge services. Supplemental Stipulation of Facts dated May 17, 2022, #1.

will not be able to check into their next apartment until after 3:00 pm EST that same day…[g]uest may leave their luggage at the Management Office during this time".[13] The written agreement referred to the occupant not as "subtenant" but as the "guest," a term commonly used to describe the occupant of a hotel room. Similarly, the agreement refers to the guest's "luggage" suggesting that the guest's stay was transient or temporary like a hotel guest. The "Management Office" thus temporarily stored the tenant's luggage as would the service desk at a hotel.

"Check-in" for the units took place only at the offices of the Management Company, irrespective of where the units were actually located in the city, and keys were never provided for the top lock to the front door of a unit.[14] The Management Company received all mail on behalf of Subtenants as mailbox keys to occupied units were not provided to the Subtenants "under any circumstances".[15]

The written agreements state that "Subtenant shall contact the Management Company for all repairs and maintenance and customer service issues"[16] and that "[i]ssues including but not limited to, broken items, missing supplies, sanitation issues, interrupted services or utilities must be reported to the Management Company [so that the

[13] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 69, 78, 83 and 89.
[14] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 1, 5, 14, 18, 28, 32, 41, 45, 54, 58, 67, 69, 73, 76, 78, 81 and 83.
[15] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 5, 18, 28, 32, 45, 58, 69, 73, 78 and 83.
[16] For example, *see* Stipulation of Facts dated February 16, 2021, Exhibit 2, at 7, 20, 34, 47, 60, 70, 79 and 84.

Management Company can] correct repair or replace any reported deficiencies that are within the Management Company's control".[17]

Subtenants were not permitted to turn the heating valves or otherwise tamper with any radiators.[18] The written agreements also restricted occupants from allowing doors to be left unlocked: "The front door to the building must not be left open. After moving in luggage please make sure the door is closed and locked".[19] Once again, the reference to "luggage" implies a transient guest who is traveling to the destination where the apartment is located.

Subtenants were restricted from unplugging any electronic devices, such as router or television boxes in the unit, and were directed by the written agreements to call the Management Office if the internet or television in the unit stopped working.[20]

Subtenants were not permitted to make any alterations to the unit or sublease/assign the unit without Petitioner's prior written consent, which Petitioner "may withhold in its sole discretion", implying that it may be unreasonably withheld. The "sole discretion" language divested the occupant of any right to make alterations and granted to Petitioner the absolute authority to approve or disapprove without the need for Petitioner to provide any reason to the occupant for disapproving.[21]

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[17] For example, *see* Stipulation of Facts dated February 16, 2021, Exhibit 2, at 7, 20, 34, 47, 60, 70, 79 and 84.
[18] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 6, 19, 33, 46, 59, 70, 79 and 84.
[19] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 10, 23, 37, 50, 63 and 72.
[20] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 10, 23, 37, 50, 63 and 72.
[21] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 7, 20, 34, 47, 60, 70, 71, 80 and 85.

The only individuals permitted to stay overnight at the units were those individuals who were disclosed to the Management Company by occupants, and sometimes those disclosed individuals were subject to a criminal background check.[22] The agreement was also explicit in the following respect: "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"[23] The reference to "Guest Party" is to the "Rental Party" defined in paragraph 10 of each of the agreements under the caption "Maximum Occupancy" in which each of the occupants under the agreement are listed by name. Here, as in other provisions of the agreement, the term "Guest" is used interchangeably with "Subtenant". "Guest" is the term used for hotel occupants to describe the transiency of their stay. Use of air mattresses was not permitted in the apartments.[24]

All units, in addition to being fully furnished, were equipped with kitchen cookware, utensils, dishes, linens and towels.[25] The written agreements state that property furnishings and supplies include one set of linens per bed, which includes two sheets and one blanket, a minimum of four pillows, two bath towels, two hand towels and two face cloths.[26] The written agreements also state that kitchen towels and bath mats are provided, in addition to appliances and small wares "as described on the Property

[22] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 4, 10, 13, 17, 22-23, 31, 37, 44, 57, 63, 68, 72, 77-78 and 82-83.
[23] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 10, 23, 37, 50, 63 and 72.
[24] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 10, 23, 37, 50, 63 and 72.
[25] Stipulation of Facts dated February 16, 2021, #5.
[26] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 3, 15-16, 30, 43, 56, 68, 77 and 82.

listing".[27] These agreements state that replenishment of these items and any additional supplies, such as soap and shampoo, are the responsibility of the Subtenant.[28]

Petitioner advertised the units as "[f]ully equipped with…cookware and dishware [sic] the kitchen is prepared to meet your needs"[29] and some advertisements stated, "The kitchen includes appliances, cookware and dishware for a convenient stay".[30]

The CALJ found that Petitioner's advertisements used words such as "travelers", "sightseeing" and "convenient stay." We find that the advertisements were aimed at transient hotel guests, travelers with luggage, not people seeking to sublet an apartment as a home, temporary as the sublease term may be.

An initial supply of toilet paper, hand soap and dishwashing liquid was provided.[31] Free wireless internet service generally was provided in the unit[32] and the written agreements stated, "Sublandlord will take reasonable efforts to restore internet service in the event of a loss of service…."[33] While some of the written agreements state that "Cable TV is not included" or that "[t]elephone service is not provided",[34] others state that "Basic cable television channels are provided in the unit under the same terms and conditions as the internet service".[35]

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[27] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 3, 16, 30, 43, 56, 68, 77 and 82.
[28] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 3, 16,30 43, 56 68, 73,77 82 and 83.
[29] Stipulation of Facts dated February 16, 2021, Exhibit 1, at 3, 6 and 19.
[30] Stipulation of Facts dated February 16, 2021, Exhibit 1, at 25.
[31] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 3, 16, 30, 43, 56, 68, 73, 77 and 83.
[32] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 6, 19, 26, 33, 46, 59, 69, 73, 79 and 84.
[33] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 19, 26, 69 and 79.
[34] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 6, 16, 30, 33. 43, 46, 59, 68, 77 and 83.
[35] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 19.

The occupants paid for their own utilities[36] and were also responsible for paying the cleaning fee, which covered the initial cleaning of the unit. The written agreements stated, "While linens and bath towels are included in the unit, daily maid service is not provided or in any way the [sic] included in the rental rate". In other words, the amounts occupants paid to Petitioner relating to the units did not cover daily maid service. The written agreements stated, "Sublandlord will deliver the Property to the Subtenant [sic] clean condition and with fresh linens as described above". If an occupant wanted the unit cleaned again after the initial cleaning, the Petitioner would provide them with the name and phone number of a cleaning service which the occupant could hire and pay directly. While "[t]his cleaning service was rarely requested", we find that Petitioner's referral was a service Petitioner provided to guests on request.

Some of the written agreements contain a provision that states that in the "unlikely event that the Property…is not available or otherwise uninhabitable, the [Petitioner] 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, without additional cost to the Subtenant"[37] (Emphasis added.) Here, as in other provisions, the term "guest" is used interchangeably with "subtenant".

[36] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 1, 6,19,33,46,59,70,79 and 84. Petitioner billed occupants for the gas and/or electricity utility services actually used during the term of the agreement. Stipulation of Fact dated February 16, 2021, #13.

[37] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 7, 34, 47, 70, 79, 84 and 90; *see also* Supplemental Stipulation of Facts dated May 17, 2022, Exhibit 3.

The written agreements also called on the occupant to initial a provision in the written agreement that states, "Subtenant is aware that the Sublandlord intends to rent the Property to another subtenant after the expiration of Subtenant's sublease".[38] The written agreements state that "[Petitioner] and Management Company shall have access to the Property for purposes of showing the Property to prospective future subtenants…."[39] The written agreements contain a holdover tenant provision which states that "[i]f 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…."[40] We find that the units were regularly offered for transient occupancy and that Petitioner was equipped with certain legal remedies to enforce its own rights vis-a-vis noncompliant occupants.

We find, based on a review of the record,[41] that Petitioner is in the business of regularly offering to the public furnished residential units in its possession as well as certain services and accommodations incidental to the occupancy of such units. We further find that, contrary to the characterization of the written agreements Petitioner signed with occupants as "Monthly Sublease Agreements", they are, on balance, more in the nature of accommodation agreements or hotel contracts that set out the terms and conditions for a convenient stay for transient guests at the units.

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[38] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 11, 24, 38, 51, 64 and 73.
[39] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 6, 19, 33, 46, 59, 69, 78 and 83.
[40] Stipulation of Facts dated February 16, 2021, Exhibit 2, at 5-6, 18, 32-33, 45-46, 58-59, 69, 78, 83 and 89.
[41] *See generally* Stipulation of Facts and accompanying Exhibits, including the Stipulation of Facts dated February 16, 2021 (particularly Exhibits 1 and 2), and Supplemental Stipulations of Facts, including the one dated May 17, 2022.

Petitioner filed Hotel Room Occupancy Tax returns (HROT returns), forms NYC-HTX, for quarters ended August 31, 2014, through August 31, 2017, and paid the tax due as set forth on such returns. Subsequently, Petitioner filed amended HROT returns claiming a refund of HROT relating to tax quarters ended August 31, 2016, November 30, 2016, February 28, 2017, May 31, 2019, and August 31, 2017.[42] Following an audit of the amended HROT returns,[43] in which the Department focused exclusively on the occupancy of Petitioner's units that had a term of 180 days or more, on January 14, 2019, the Department issued a Notice of Disallowance denying Petitioner's claim for refund of HROT relating to tax periods ended August 31, 2014, August 31, 2016, and November 30, 2016.[44] Also on January 14, 2019, the Department issued a Notice of Determination asserting HROT due relating to tax periods ended August 31, 2014, through November 30, 2016.[45] Petitioner received neither a refund nor a Notice of Disallowance in response to Petitioner's refund claim filed on or around December 11, 2017, relating to tax periods ended February 28, 2017, through August 31, 2017.[46]

The CALJ, after considering the statutory and regulatory scheme of the HROT, and the stipulated facts, concluded that Petitioner's sublet of apartments for varying periods of less than 180 days constituted the operation of a "hotel" under Administrative

[42] Stipulation of Facts dated February 16, 2021, #16-17.
[43] The Department conducted an audit of Petitioner's HROT returns filed for the period June 1, 2014, through November 30, 2016. Stipulation of Facts dated February 16, 2021, #19.
[44] Stipulation of Facts dated February 16, 2021, Exhibit 8. *See also* Stipulation of Facts dated February 16, 2021, #20 and 22.
[45] Stipulation of Facts dated February 16, 2021, Exhibit 7; Stipulation of Facts dated February 16, 2021, #21.
[46] Stipulation of Facts dated February 16, 2021, #23. The parties stipulated that "[i]f the Petitioner is not subject to the [HROT] it would be entitled to a refund of tax, before refund interest" as detailed in the stipulation. Stipulation of Facts dated February 16, 2021, #28.

Code § 11-2501[5], subject to the HROT under Administrative Code § 11-2502.a. The CALJ Determination, thus, sustained the Notice of Determination and the Notice of Disallowance and denied the Petitions before her.

The CALJ concluded that the relationship between Petitioner and the nominal "Subtenants" under the agreements was not as a "Landlord-Tenant" but as "innkeeper - guest"[47] because Petitioner regularly rented fully furnished apartments to guests on a transient basis and the guests lacked the requisite dominion and control over the rented apartments to constitute a landlord-tenant relationship. In reaching her conclusion, the CALJ's findings emphasized, among other things, that petitioner advertised to *travelers* with booking links for reservations. She also emphasized that the occupancy agreements limited dominion and control of the apartments by prohibiting the use of mailboxes, requiring occupants to retrieve their mail at Petitioner's offsite management office and prohibiting the occupants from using any security desk, concierge, super, or doorman services available to renters in the building where the guest's apartment was located.

Petitioner's principal argument is that the statutory definition of "hotel" in New York City Administrative Code (Administrative Code) section 11-2501[5], "A building or portion of which is regularly used and kept open as such for the lodging of guests . . ." is, by itself, insufficient to distinguish a hotel room from a rental of real estate. Petitioner argues that the statutory language, therefore, must be read to import from the "common

[47] CALJ Determination, at 30.

law" definition of "hotel" the additional requirement that it must provide "customary hotel type services" such as maid/ housekeeping services.[48]

Respondent, in turn, argues that a hotel is defined under §11-2501[5], not by the particular bundle of services it offers, but by the transiency of the occupancy and the regularity by which lodging is offered to transient guests.[49] Respondent contends that HROT Rule 19 RCNY §12-01 makes clear that the HROT is carefully confined only to rentals to "guests on a transient basis".[50] Thus, Respondent contends, a hotel which regularly markets its accommodations to travelers for the purpose of sightseeing, where each transient occupant must "check in" and "check out" by a specified date and time to ensure the apartments can be regularly offered to accommodate travelers, satisfies these requirements – so long as the duration of the stay is less than 180 days (a "permanent resident" under the HROT). Respondent reasons that such an arrangement can be distinguished from the subletting of an apartment, even if the duration of the sublet is only 30 days, because the apartment is not regularly kept available to be offered as lodging. Respondent contends that the renters in that case, though short-term, are not transient guests.

Respondent further argues that importing additional language into the statute from the common law would undermine the intent of the Legislature, by adding requirements

[48] Pet. Br, at 13-15. We note that during oral argument petitioner's counsel was unable to clearly articulate the contours of where a "customary hotel type service" begins and ends. At no point did Petitioner present a workable definition for how a customary hotel type service should be defined.
[49] Resp. Br., at 19-21.
[50] Resp. Br., at 16.

not contained in the statute.[51] "If the Legislature wanted to narrow the definition of 'hotel' by adding a requirement that "customary hotel services" be provided, it could have done so."[52]

Petitioner also argues that the New York City Hotel Room Occupancy Tax must be read in *pari materia* with the New York State Sales Tax on Hotel Occupancy because, Petitioner argues, they are "identical statutory provisions" and should have the same meaning.[53]

Respondent points out that the City HROT has its own enabling legislation that is separate from the State sales tax; Respondent argues that it is the City, not the State, that administers the HROT and has its own separate rule-making authority to interpret the HROT. [54] Furthermore, Respondent argues that *Matter of Schneider v. Schuyler County*, 140 AD3d 1373 [3d Dept 2016], *lv denied* 45 NYS3d 374 [2016], held that any policies set by the NYS Commissioner of Taxation and Finance under the statewide sales tax are "not binding on local authorities administering a local tax."[55] Respondent contends, therefore, that it may follow the plain unambiguous language defining "hotel" in §11-2501[5], and that Respondent is not bound by any administrative interpretations of that definition under the state sales tax.

[51] Resp. Br., at 18.
[52] *Id*.
[53] Pet. Br., 17-25.
[54] Resp. Br., 21-23.
[55] Resp. Br., 23.

Respondent relies on the CALJ's factual findings to show that Petitioner's Subtenant-Guests lacked sufficient control over the apartments, in support of Respondent's position that Petitioner's relationship to "Subtenants" is that of innkeeper-guest rather than landlord-tenant.

Petitioner argues that the written agreements discussed above "establish[] the rental of real estate as opposed to a room in a hotel".[56] Petitioner contends, with respect to each written agreement, that:

> "[The written agreement] references the parties as sublandlord and subtenant. It requires the subtenant to pay for their own gas and electric usage, to remove their own trash and recyclables, make the apartment available for viewing to potential future tenants, wash their own towels and linens, replace their own toilet paper, etc. It further provides that a subtenant can make alterations to the apartment, as well as sublet, with written consent from the sublandlord. Furthermore, if a Subtenant did not vacate the premises at the end of the lease, they could be treated as a "hold over" on a month-to-month basis. The Petitioner was actually required to bring such proceedings against its tenants…. All four corners of the Monthly Sublease Agreements, and the relationship between the Petitioner and the Third Parties, constitute the rental of real estate between a landlord and tenant as opposed to the providing of a room in a hotel."[57]

Petitioner generally does not dispute the facts on which Respondent and the CALJ rely, but states, erroneously, that a Subtenant may alter the property.[58] As explained, *supra,* the Subtenant requires Petitioner's consent to alter the property which Petitioner "may withhold in its sole discretion". As Petitioner may withhold its consent for any

[56] *Id* at 28.
[57] *Id*.
[58] Pet. Br., at 32.

reason, reasonable or not, the Subtenant has no independent right to alter the premises. We, therefore, reject Petitioner's contention that the Subtenant "may alter the Property."

Petitioner contends that certain language in Administrative Code section 11-2501 (Definitions) supports Petitioner's argument that customary hotel type services are a prerequisite to something qualifying as a "hotel". Administrative Code section 11-2501[5] defines the term "hotel":

> "'Hotel.' A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term 'hotel' includes an apartment hotel, a motel, boarding house or club, *whether or not meals are served*." (emphasis added).

Petitioner contends that "[t]he statute's specific exclusion of only one type of customary hotel service [meals being served], and omitting other types of customary services from the statute's exclusion, reinforces that the legislature's definition of a 'hotel' requires these other customary hotel type services."

Respondent, in response, argues that that the definition of "hotel" contained in the first sentence is clear and unambiguous, requiring only "[a] building or portion thereof which is regularly kept open for the lodging of guests." According to Respondent, this means regularly offering apartments to transient guests. Seeing no ambiguity in the definition, Respondent argues that the second sentence in the "hotel" definition, which applies to the specific examples listed (i.e., motels, boarding houses), underscores that regardless of whether or not these specific examples of "hotels" serve meals, each are, nevertheless, "hotels" because the serving of meals is not a requirement for a "hotel." The added language, Respondent contends, thus, strengthens Respondent's argument that

the provision of additional services is not required. Seeing no ambiguity, Respondent argues that there is no need to invoke the *expressio unius est exclusion alterius* rule of statutory construction.

For the following reasons we affirm the CALJ Determination, deny the Petitions, sustain the Notice of Determination and the Notice of Disallowance, and deny the stipulated tax refund amounts.

The State Enabling Legislation, enacted in 1970, grants the City of New York broad authority to impose a tax on hotel room occupancy. It states, in relevant part:

> "Notwithstanding any other provision of law to the contrary, any City having a population of one million or more is hereby authorized and empowered to adopt and amend local laws imposing in any such city a tax in addition to any tax authorized and imposed pursuant to article twenty-nine of the tax law such as the [State] legislature has or would have the power authority to impose on occupying hotel rooms in such city."

(NY Unconsol. Ch. 288-C, Section 1).

The Enabling Legislation further provides that:

> "Such tax may be collected and administered by the finance Administrator or other fiscal officers of such city by such means and in such manner as other taxes which are now collected and administered by such officers in accordance with the charter or administrative code of any such city or as otherwise may be provided by such local law".

Pursuant to the 1970 enabling statute, "the Legislature granted the City broad authority to enact an occupancy tax, and the City properly exercised that authority [in

enacting the HROT]". (*Expedia, Inc. v. City of N.Y. Dept. of Fin.,* 22 N.Y.3d 121, 127, [2013]).

Administrative Code section 11–2502(a)(2) provides that "there shall be paid a tax for every occupancy of each room in a *hotel* in the City of New York [at specified rates]." (emphases added).[59]

Administrative Code section 11-2501[5] broadly defines the term *hotel*:

> "'Hotel.' A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term 'hotel' includes an apartment hotel, a motel, boarding house or club, *whether or not meals are served*." (emphasis added).[60]

It is well established that "[t]he primary consideration of courts in interpreting a statute is to ascertain and give effect to the intention of the Legislature" (*Riley v. County of Broome,* 95 N.Y.2d 455, 463 [2000]). "[W]e begin with the plain language of the statute, which is the clearest indicator of legislative intent" (*T-Mobile Northeast, LLC v. DeBellis,* 32 N.Y.3d 594, 607 [2018]; *DaimlerChrysler Corp. v. Spitzer,* 7 N.Y.3d 653, 660 [2006]; *Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 NYd 577,583 [1988]).).

[59] We agree with the CALJ that New York City properly exercised its Hotel Tax authority when it enacted Administrative Code section 11-2502.a(1). *See* CALJ Determination, at 20-21.

[60] Section 12-01 (Title 19, Chapter 12) from the Rules of the City of New York provides: "A 'hotel' is a building or portion of a building 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 '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...."

If a statute's language is clear on its face, it should be interpreted as it exists without reference to unrelated provisions of law or tools of statutory interpretation. (*Doctor's Council v. New York City Employee's Ret. Sys.,* 71 NY2d 669, 674-75 [1988].)

Under the statute's plain language, the first sentence of Administrative Code section 11-2501[5] broadly defines the term "hotel" as "a building or portion of it which is regularly used and kept open as such for the lodging of guests". The language is clear and unambiguous and there is nothing in Administrative Code section 11-2501[5] requiring a hotel to provide "customary hotel services". As discussed, *infra*, the second sentence of Administrative Code section 11-2501[5] is an inclusive provision, broadening the scope of "hotel" by clarifying that it includes a wide variety of categories of accommodation. Consistent with the broad definition of "hotel" under section 11-2501[5], the Commissioner of the NYC Department of Finance promulgated 19 RCNY § 12-01, which provides that a "hotel" also includes a "bungalow", defined as "a furnished living unit intended for single family occupancy that is regularly used and kept open for the lodging of guests for consideration . . . ." Illustration (iii) of this rule applies here:

> "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."

According to the Basis and Purpose of the Rule Amendment:

> "…[A]partment owners are taking advantage of the exception to rent their apartment 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".[61]

Rule § 12-01 plainly illustrates that "customary hotel services" are not required for the rental of the furnished apartment to be subject to the HROT.

Petitioner contends that the specificity of the language "whether or not meals are served" in Administrative Code section 11-2501[5] implies that the service of meals is the only service excluded from the definition of "hotel" but that other "customary hotel type services" such as maid or housekeeping services are required for Petitioner's apartment rentals to constitute a "hotel."[62]

Petitioner thus invokes the maxim *expressio unius est exclusio alterius* to read these other services into the statute. However, this maxim "is merely an aid to be utilized in ascertaining the meaning of a statute when its language is ambiguous, and should be applied to accomplish the legislative intention, not to defeat it" (McKinney's Cons Laws of NY, Book 1, Statutes, §240). As we conclude that the definition of "hotel" under Administrative Code §11-2501[5] is not ambiguous, this maxim does not apply.

We also emphasize that the "whether or not meals are served" language appears in the second sentence of the definition of "hotel" in §11-2501[5]. That sentence clarifies that a "hotel" includes, among a variety of specified categories of lodging, a "club" or "boarding house," lending further support to the broad definition in the first sentence, confirming that the scope of "hotel" is to be read broadly. Adding the language "whether

[61] *See* Respondent's Memorandum of Law, Exhibit A.
[62] Pet. Br., 15-17.

or not meals are served" serves to clarify that the statutory definition of "hotel," unlike the common law, does not require those services. The addition of such language, rather than narrowing the broad scope of "hotel" in the first sentence, clarifies and supports its broad scope. Thus, the second sentence not only clarifies that "hotel" is to be broadly read to be inclusive of a wide variety of categories of lodging, but also clarifies that the failure to serve meals at a club or boarding house does not remove it from the definition of "hotel," so long as the lodging is regularly offered to transient guests, as required by the broad definition in the first sentence.

We agree with the CALJ's conclusion and analysis that Petitioner's rental units were "regularly used and kept open as such for the lodging of guests" under Administrative Code section 11-2501[5].[63] The CALJ correctly concluded that the stipulated facts overwhelmingly show that Petitioner and its customers had an innkeeper-guest relationship, in which Petitioner regularly offered fully furnished residential units as lodging to transient guests for periods of less than 180 days. Supporting an innkeeper-guest relationship, each occupancy agreement requires a specific date and time to check in and check out, interchangeably refers to the occupant as a guest, references "luggage" and advertises to "travelers" for "sightseeing". All of the many other facts described, *supra*, establish that Petitioner's relationship under its agreements with the occupants of its residential units is as an innkeeper-guest, not as a landlord tenant. Furthermore, we

[63] CALJ Determination, at 21-33; the facts supporting the CALJ's analysis are at 30-33.

agree with the CALJ's conclusion that Petitioner did not "transfer exclusive dominion and control" over the residential units as in a landlord-tenant relationship.[64]

As discussed, *supra*, each of the sample agreements in evidence divested the occupants of all of the usual and essential services they would be entitled to receive from the building as renters of the apartments, such as use of the building's super, service desk, concierge services and use of the building's mailboxes. Moreover, there is the imposing requirement that all mail be delivered to a management office located some distance from the building. All the agreements specified that Petitioner's management office provides each and every service needed by Petitioner's Subtenant/ Guests, including repairs to the apartment, repairs to any appliances furnished to guests under the agreement, as well as other services described above. Instead of receiving services from the building to which tenants subject to a building lease of the apartment would be entitled, Petitioner *exclusively provided all* services to guests through its management office.

Unlike the rental of an apartment, under each of Petitioner's sample agreements occupants of the units were prohibited from any "social gatherings" or "parties" in the apartment with any individuals unless those individuals were previously disclosed occupants. Prohibiting any social gathering in the apartment with people who were not previously disclosed occupants is a substantial restriction on the occupant's dominion and control over the apartment. These, and many more restrictions under the agreement described above, imposed upon occupants restrictive policies and procedures that

[64] CALJ Determination, at 26-32.

significantly curtail the occupants' possession and control of the units. Considering these restrictions on occupants' dominion and control and the furnishing of all services by Petitioner, the CALJ correctly concluded that the units were regularly used and kept open as such for the lodging of guests.[65] This was Petitioner's whole business model.

We note that Petitioner bears the burden of proof to show that any rents received are not taxable. Thus, Administrative Code §11-2502.j states:

> "For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax unless the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator [Petitioner] or the occupant."

Petitioner, as operator,[66] bears the burden of proving that the occupancy of the units and, therefore, the rents received from those units, are not taxable. As the facts overwhelmingly establish that Petitioner regularly offered the units for periods of less than 180 days for the lodging of guests, we conclude that Petitioner was subject to the HROT on the rental of the units and failed to meet its burden under Section 11-2502.j.

We also address Petitioner's contention that the City HROT must be read in *pari materia* with the New York State (State) sales tax on Hotel Room Occupancy. The basis for Petitioner's argument is that they are "identical statutory provisions" and should have the same meaning.[67]

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[65]CALJ Determination, at 15-16.

[66] Defined in Administrative Code §11-2510[2] a: Any person operating a hotel in the City of New York, including, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel.

[67] Pet. Br., at 17-25.

We agree with Respondent that the City HROT has its own enabling legislation that is separate from the State sales tax on hotel room occupancy and that it is the City, not the State, that administers the City HROT under the City's own statutory rule-making authority to interpret the HROT.[68] We also agree with Respondent that this issue has been addressed in *Matter of Schneider v. Schuyler County*, 140 Ad3d 1373 [3d Dept 2016], *lv denied,* 45 NYS3d 374 [2016], which held that any policies set by the NYS Commissioner of Taxation and Finance under the statewide sales tax "are not binding on local authorities administering a local tax."[69]

Respondent, therefore, may follow the plain unambiguous language defining "hotel" in Administrative Code §11-2501[5], and is not bound by any administrative interpretations of that definition under the state sales tax.

Petitioner has failed to meet its burden of proving that it is not subject to tax.[70]

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[68] *See* Administrative Code §11-2511[1]. Specifically, Section 11-2511[1] grants the City's rule-making authority to the Commissioner of the NYC Department of Finance.

[69] We also take note of the difference between a sales tax on hotel room occupancy and the HROT. Pursuant to New York Tax Law 1105(e), the sales tax is imposed on "[t]he rent for every occupancy of a room or rooms in a hotel in this state" while the HROT is imposed under Administrative Code §11-2502.a as "a tax for every occupancy of each room in a hotel in the city of New York . . .[measured by the amount of the rent]". Thus, the State hotel sales tax is imposed on *the rent* (the relevant "sale") and the HROT is imposed on *the occupancy*. Although both are valued the same (on the amount of rent), they are imposed on different acts – the *act* of renting as distinguished from the *act* of occupancy. While the taxes are substantially similar in terms of computation and value, they are imposed on different acts. The HROT is an excise tax on the act of occupancy, as with the lodging of guests. On the other hand, the sales tax is, in reality, an excise tax on the sale of services.

[70] *See* Administrative Code section 11-2502(j)("...it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator....")

We, therefore, affirm the CALJ Determination, deny the Exception, sustain the Notices and deny the stipulated tax refund amounts.[71]

Dated: December 24, 2025
New York, NY

/s/
Neil Schaier
President and Commissioner

/s/
Robert J. Firestone
Commissioner

/s/
Vlad Frants
Commissioner

[71] We have considered all the other arguments of the Parties and find them unpersuasive.