

REVISED 01- 2 – HTX 9/28/01

STATEMENT OF AUDIT PROCEDURE

AUDITS OF RESELLERS OF HOTEL ROOMS

I. BACKGROUND

The New York City Hotel Room Occupancy Tax ("HROT") applies to the occupancy of any room in a hotel in the City. The hotel operator is obligated to collect the tax and pay it over to the Department, however, if the operator does not collect and pay over the tax, the occupant of the room is obligated to pay the tax. The tax does not apply to a permanent resident, which is defined in section 12-01 of the Rules of the City of New York relating to the HROT as a person who has occupied or has had the right to occupy a room in a hotel for 180 consecutive days. If a person surrenders his or her occupancy during a 180-day period and then resumes occupancy, the person cannot qualify as a permanent resident based on that 180-day period. However, a person can qualify as a permanent resident notwithstanding the fact that the person changes rooms during the 180-day period provided the rooms are in the same hotel establishment.

Section 12-01 provides in the definition of "occupancy" that a room can only be the subject of one taxable occupancy at a time. The definition of "operator" contained in that section provides that a person who "contracts away the use of a room or rooms" in a hotel becomes an operator. In that case, the taxable occupancy is the occupancy of the sublessee of the room.

Ad. Code section 11-2502.f provides that the tax must be stated and charged separately from the room rent and subdivision k of that section provides that hotel operators are prohibited from advertising that the tax is not "an element in the rent charged" for the room.

It has come to the attention of the Department that various members of the tourism industry (referred to hereinafter as "resellers") may contract with hotels to purchase blocks of rooms for periods in excess of 180 days, generally at rates below the individual room rate available directly to the public. These resellers resell these rooms. These resellers sometimes resell the rooms as part of a package of travel services including entertainment, travel, and local transfers. At other times, the rooms are resold separately. Sometimes, the reseller is unable to resell the room at all.

Under these contracts, the reseller may guarantee that it will pay for some or all of the rooms regardless of whether it is able to resell them. Many of these resellers and hotels have taken the position that with respect to such rooms, once the reseller has had the right to occupy a room under the contract for 180 days, the reseller becomes a permanent resident and the tax no longer applies to the room rent paid by the reseller. However, the contracts do not address any liability of the reseller to collect tax on its resale of the rooms. Many resellers have not collected or paid over any HROT with respect to resales of the rooms purchased under these contracts. Because resellers of rooms have rented real property, *i.e.*, the rooms, in the City, they have nexus to the City and are subject to taxation in the City.

The Department has promulgated final amendments to the HROT rules under which the taxable occupancy of a room will be the occupancy by the original occupant of the room regardless of whether the occupant resells the room. The only exception to that rule will be when the occupant is related to the original hotel operator. Those rules will be effective beginning June 1, 2002. However, the Basis and Purposes clause of the rules provides that the prospective effective date has no implications for the application of the tax to resellers of rooms prior to June 1, 2002.

II. SCOPE

The Statement of Audit Procedure provides guidance to HROT auditors in auditing and resolving HROT liabilities of resellers of hotel rooms for periods beginning prior to June 1, 2002 ("Outstanding Liabilities") using an Accelerated Audit Procedure ("AAP.") Except as provided below, the AAP is available for all audits and reaudits initiated prior to October 31, 2001.

The AAP will not be available for resolving refund claims for any periods.

The AAP also will not be available to any person with respect to the occupancy of any room for which that person has collected the tax but has failed to pay over the tax to the Department.

III. ACCELERATED AUDIT PROCEDURE

As an alternative to existing audit procedures, taxpayers engaged in the rental and resale of hotel rooms in the City will have the option of requesting an Accelerated Audit by completing and submitting an Accelerated Audit consent in the form attached hereto as Exhibit A. Taxpayers under audit for HROT as of the date of this SAP will be contacted by the auditor and advised of the availability of the AAP. For HROT audits initiated after the date of this SAP and before October 31, 2001, the appointment letter initiating the audit will include information describing the AAP.

A. Accelerated Audit

The scope of an Accelerated Audit will be limited to open periods beginning on or after June 1, 1998 and before June 1, 2002. (the "Audit Period.")

Under the AAP, taxpayers that have not filed HROT returns and taxpayers that have filed but have not correctly computed the tax will be required to compute the correct tax liability under a self-audit procedure. The auditor will prepare a self-assessment audit plan in the form attached hereto as Exhibit B for the taxpayer to follow. The audit plan may include a sample worksheet to guide the taxpayer in the computation of its correct HROT liability as well as an information document

request outlining any additional information that the taxpayer is expected to supply. The taxpayer will be given a fixed period within which to complete the audit that will not be less than 90 days but generally will expire no later than December 31, 2001. Requests for extensions will be granted on a case by case basis if the Department determines that good cause exists therefor.

Once the auditor receives the completed self-audit, the auditor will review it for accuracy and completeness and submit the audit for review by his or her supervisor. Any issues concerning the audit should be resolved through correspondence or field visits. A detailed audit of one or more tax periods during the Audit Period may be conducted if the auditor's supervisor deems it necessary to verify the results of the self-audit. If the self-audit is not completed within the time limits due to the taxpayer's failure to fulfill its responsibilities under the audit plan, the AAP will no longer be available to that taxpayer.

B. Conclusion of the Audit

The Accelerated Audit is concluded by an Accelerated Audit Closing Agreement ("AAC Agreement") in the form attached hereto as Exhibit C under which the taxpayer agrees to a final liability for the Audit Period ("Final Liability") and the Department agrees to accept payment of the Final Liability as final satisfaction of all Outstanding Liabilities. If the taxpayer does not agree with the terms of the AAC Agreement, the Accelerated Audit will be discontinued and the auditor will audit all open periods and conclude the audit as a traditional audit.

HOTEL ROOM OCCUPANCY TAX
CONSENT TO ACCELERATED AUDIT PROCEDURE

TAXPAYER'S NAME: _____

ADDRESS: _____

CASE NO.: _____ EIN: _____

AUDIT PERIOD: FROM: _____ TO _____

The Taxpayer, _____, has been advised by the New York City Department of Finance Representative, _____, that as an alternative to the existing audit procedures of the New York City Department of Finance, the Taxpayer may request an Accelerated Audit for New York City Hotel Room Occupancy Tax. Under an Accelerated Audit, the Taxpayer will follow a self-audit procedure for the Audit Period in accordance with a self-assessment plan prepared by the auditor. The plan may include a worksheet for the Taxpayer to follow and an information document request outlining additional documentation that the Taxpayer is expected to supply. A fixed amount of time will be set in which to complete this self-audit that will not be less than 90 days but will expire no later than December 31, 2001. The Department may grant an extension for such time as it may in its sole discretion determine.

The Taxpayer hereby consents to the conduct of the audit using the Accelerated Audit Procedure. This does not preclude any protest of the audit results unless and until such time, if any, that the Taxpayer signs an Accelerated Audit Closing Agreement. The Taxpayer further understands that should the Taxpayer fail to complete its obligations under this procedure, or if the Taxpayer does not sign an Accelerated Audit Closing Agreement, the Department of Finance may complete the audit using other existing audit procedures and the Accelerated Audit Procedure will no longer be available to the Taxpayer to resolve this matter.

Signature _____ Print Name _____ Title _____

Date: _____

Accepted by Department of Finance Representative

HOTEL ROOM OCCUPANCY TAX
ACCELERATED AUDIT PLAN

For purposes of settling and adjusting the amount of Outstanding Liabilities pursuant to the Accelerated Audit Procedure set forth in Statement of Audit Procedure 01-02-HTX (Revised), the Taxpayer and the Department agree that the following items may be treated as set forth herein provided satisfactory documentation supporting the treatment is submitted to the Department upon request. All terms shall have the same meaning as provided in such SAP.

1. Except as provided below, the Taxpayer will be liable for the tax with respect to every room that the Taxpayer had the right to occupy during the Audit Period in an amount not in excess of an amount of tax computed based on the daily room rental rate charged by the hotel to the Taxpayer.
2. Where the HROT has been collected and paid over to the Department by the Taxpayer or any other person, with respect to the occupancy of a room on a given day during the Audit Period in an amount not less than the tax calculated on the daily room rental rate charged by the hotel to the Taxpayer, no additional tax will be due for the occupancy of that room on that day. Any additional tax collected and paid over to the Department by the Taxpayer for the occupancy of that room on that day may be credited against any other liability for HROT of the Taxpayer determined to be due in the Accelerated Audit for the Audit Period. Without limiting the application of the foregoing, where a participant was allocated a number of rooms under a contract with a hotel for which the participant guaranteed payment but did not resell or occupy one or more of the allocated rooms, the participant will not be treated as an occupant subject to the tax with respect to such rooms if the participant can establish that the hotel resold such rooms. The fact that the hotel had the opportunity to resell such rooms shall not be sufficient to establish that the rooms were in fact resold. This paragraph will not apply to any tax for which a refund has been requested and paid by the Department to the hotel, the Taxpayer or any other person.
3. Where the Taxpayer can establish that it had the right to occupy and paid for one or more rooms in a given hotel for a period of 180 consecutive days or more, the Taxpayer will be treated as a permanent resident and will not be liable for HROT with respect to such number of rooms as has remained vacant and not resold by the Taxpayer or any other person on each day during such period.

4. Where the Taxpayer can establish that it has resold a room to an occupant that has, in turn, contracted away that occupant's right to occupy the room, and has, therefore, become an operator with respect to that occupancy of that room, the occupancy of that room on that day by the Taxpayer will not be treated as a taxable occupancy provided the Taxpayer has provided the Department with the name and address of such occupant and has provided the Department with any other information in its possession that may enable the Department to assess the HROT against such occupant.

5. If the Taxpayer can establish that a room was resold to an occupant that was exempt from the tax, such as a nonprofit organization, no tax will be assessed for that occupancy.

ACCELERATED AUDIT CLOSING AGREEMENT

WHEREAS, _____, having EIN: _____, (hereafter identified as the "Taxpayer") has consented to an Accelerated Audit of Hotel Room Occupancy Tax to determine the amount of such tax, if any, that the Taxpayer may owe for periods beginning prior to June 1, 2002 ("Outstanding Liabilities"); and

WHEREAS such an Accelerated Audit has been completed; and

WHEREAS the Audit Division of the New York City Department of Finance (the "Department") and the Taxpayer now wish to settle and resolve the Taxpayer's liability for Outstanding Liabilities.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Taxpayer and the Department that:

1. The Taxpayer's Outstanding Liabilities are \$ _____ ("Final Liability") consisting of:

PERIOD	PRINCIPAL	INTEREST TO _____	TOTAL FINAL LIABILITY
	\$	\$	\$

2. The Total Final Liability shown in paragraph 1 is currently due and owing and the Taxpayer will pay the said liability pursuant to the terms stated in paragraph 3 hereof without protest. The Taxpayer hereby waives any and all right to or claim for credit/refund of all or any part of any payment of Hotel Room Occupancy Tax for the periods listed in paragraph 1 whether heretofore paid or to be paid hereunder. Taxpayer waives any and all rights to protest the assessment of the said liability before the Conciliation Bureau of the Department of Finance, the New York City Tax Appeals Tribunal or otherwise.

3. The Taxpayer will deliver to the Department a check made payable to the "New York City Department of Finance" for the Total Final Liability shown in Paragraph 1. If payment of the Total Final Liability is received by the Department after the "Interest To" date in paragraph 1, additional interest (compounded as provided in section 11-2515 of the Administrative Code of the City of New York (the "Code")) will be due. Should the Taxpayer fail to make payment as provided in this paragraph, the Commissioner of Finance may institute collection proceedings as authorized under Title 11, Chapter 25 of the Code and other relevant statutes. The Taxpayer hereby waives all defenses to such collection proceedings

4. This Agreement shall not be binding on either the Taxpayer or the Department until signed by both the Taxpayer (or its authorized representative) and the Commissioner of Finance (or his or her authorized representative.) The Taxpayer and the Department hereby represent that the persons signing below are duly authorized to sign on behalf of their respective parties. If an authorized representative signs this Agreement on behalf of the Taxpayer, a fully executed Power of Attorney must be attached hereto authorizing such representative to sign this Agreement.

COMMISSIONER OF FINANCE

By: _____

Date: _____

Print Name: _____

TAXPAYER

By: _____

Date: _____

Print Name: _____