

THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

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 Hotel Room Occupancy Tax. These rules were published in proposed form on August 30, 2004. A hearing for public comment was held on November 1, 2004.

/s/ Martha E. Stark
Commissioner of Finance

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 is amended to add the following paragraph thereto to read as follows:

A building or portion thereof will be irrebuttably presumed not to be regularly used and kept open for the lodging of guests if, during any four consecutive quarterly tax periods, or, beginning on and after September 1, 2004, during any twelve-month tax period, described in subsection a of section 12-07 of these rules, rooms, apartments or living units are rented to guests or occupants on fewer than three occasions or for not more than 14 days in the aggregate. For this purpose, the rentals of rooms in a single building or apartment will be aggregated and the rentals of apartments and living units will be aggregated. In addition, for this purpose, the rental of a room, apartment or living unit under a single contract for one or more consecutive days will be considered a single occasion. However, if a single contract provides for the rental of a room or apartment for non-consecutive days, each period of consecutive days will be considered a separate occasion. In addition, for this purpose, if a room, apartment or living unit is subleased or the right to occupy it is otherwise subcontracted away to another person, each separate sublease or subcontract of a room, apartment or living unit for a period of consecutive days will be considered a separate occasion. Furthermore, for this purpose, rentals to guests or occupants that qualify as permanent residents will not be included in the number of days or occasions of rentals.

Illustration (iii): A owns a four-bedroom house in New York City. During the period September 1, 2004 through August 31, 2005, A rents three of the bedrooms as follows: one bedroom is rented for the entire twelve month period to individual B who does not sublease the room; one bedroom is rented for one week to individual C; one bedroom is rented for two days to individual D, three days to individual E and one day to individual F. The rental to individual B is not considered a rental occasion or included in determining the number of days of room rentals. A is considered to have rented rooms on four occasions. However, because the total number of days is less than 14, A is not considered to be operating a hotel.

Illustration (iv): Individual A owns four apartments in New York City. During the period September 1, 2004 through August 31, 2005, A rents the apartments as follows: one apartment is rented for the entire 12-month period to individual B who does not sublease the apartment; another apartment is rented for one week to individual C; a third apartment is rented for two days to individual D, five days to individual E and four days to individual F. The rental to individual B is not considered a rental occasion or included in determining the number of days of room rentals. A is considered to have rented three of the apartments on four occasions.

Because the total number of days of rentals of the three apartments is more than 14, A is considered to be operating a hotel with respect to the three apartments rented to C, D, E, and F. If the apartment rented to B were rented to B for only 190 days and was subsequently rented during the period to individual G for three days, that apartment would also be included as part of the hotel operation of A.

§2. Subdivision (a) of section 12-06 of such rules is amended to read as follows:

(a) Every operator is required to file a certificate of registration in a form prescribed by the Commissioner of Finance. In the case of operators commencing business or opening new hotels the certificate is required to be filed with the Commissioner of Finance within three days after such commencement or opening. An operator of a hotel having 10 or more rooms or 10 or more apartments or living units offered for lodging of guests is deemed to have commenced business or opened a new hotel when such rooms are first offered to the public. In the case of a building or portion of a building having fewer than 10 rooms or fewer than 10 apartments or living units offered for lodging of guests, the operator will be considered to have commenced business or to have opened a hotel as of the first date that the rental of such rooms or living units exceeds either of the de minimis thresholds described in subsection a of section 12-01 of these rules (i.e., such rooms or units are rented on three or more occasions or for more than 14 days in the aggregate) during any four consecutive quarterly tax periods, or, beginning on and after March 1, 2005, during any twelve-month tax period.

Within five days after such registration, the Commissioner of Finance shall issue, without charge, to each operator, a certificate of authority empowering such operator to collect the tax from the occupant, and, in addition, a certificate of authority for each additional hotel of such operator. Each certificate shall state the hotel to which it is applicable. Such certificate of authority must be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates are not assignable or transferable and must be surrendered immediately to the Commissioner of Finance upon the cessation of business at the hotel named therein, or upon its sale or transfer, together with an affidavit setting forth the pertinent details of such cessation. An operator of fewer than 10 rooms or 10 apartments or living units, after having registered, is not deemed to have ceased business merely because the rental of rooms or living units falls below the de minimis thresholds set forth in the last paragraph of the definition of "hotel" contained in section 12-01 of these rules during a subsequent quarterly or annual period unless the operator has filed annual reports for each the immediately preceding three annual periods showing no rooms available for rental to transients (i.e., guests other than permanent residents). If the business is continued at the same place, but there is a change in the form of the organization, such as from a single proprietorship to a partnership or corporation, the operator is required to return his certificate for cancellation, and the successor is required to file a new application for a certificate of authority.

§3. Subdivision (a) of section 12-07 of such rules is amended to read as follows:

(a) [Every] Except as provided herein, every operator shall file with the Commissioner of Finance a return of occupancy and of rents, and of the taxes payable thereon, on the form prescribed by the Commissioner of Finance, for the [quarter annual] quarterly periods ending on the last day of February, May, August, and November of each year. Notwithstanding the foregoing, with respect to tax periods beginning on and after the first day of September, 2004, (i) an operator of a hotel having fewer than 10 rooms may file the above return for each such hotel on an annual basis for each twelve-month period ending on the last day of February of each year, and (ii) an operator of fewer than 10 furnished apartments or living units may file the above return on an annual basis for each twelve-month period ending on the last day of February of each year covering all such apartments or living units. Such returns shall be filed within twenty days after the last day of each such period. For the period beginning September 1, 2004 and ending February 28, 2005, an operator of fewer than 10 apartments or living units or of a hotel having fewer than 10 rooms may file the above return for each such hotel or apartments or living units covering that period on or before March 21, 2005. An operator of fewer than 10 rooms or fewer than 10 apartments or living units, after having registered, is required to file a return for each subsequent quarterly or annual period thereafter regardless of whether the rental of rooms or living units falls below the de minimis thresholds set forth in the last paragraph of the definition of "hotel" contained in section 12-01 of these rules during a subsequent quarterly or annual period unless the operator has filed annual reports for each of the immediately preceding three annual periods showing no rooms available for rental to transients (i.e., guests other than permanent residents).

An operator who [terminates his] ceased business must file a final return within twenty days from the date such business [terminated] ceased, covering the period or portion of the period during which he conducted such business subsequent to the period for which a return was last required to be filed. If the business was sold, the purchaser thereof must file a return for the period from the date of purchase to the end of the period of which a return is required to be filed. An operator of fewer than 10 rooms or 10 apartments or living units, after having registered, is not deemed to have ceased business merely because the rental of rooms or living units falls below the de minimis thresholds set forth in the last paragraph of the definition of "hotel" contained in section 12-01 of these rules during a subsequent quarterly or annual period unless the operator has filed annual reports for each of the immediately preceding three annual periods showing no rooms available for rental to transients (i.e., guests other than permanent residents).

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 and the filing of returns.

These amendments establish a safe-harbor for purposes of determining when the renting of rooms or apartments to guests is insufficiently frequent and regular to constitute the operation of a hotel. However, once that de minimis threshold of rentals is met or exceeded, an operator of fewer than 10 rooms or living units must continue to collect the tax and file returns even if the level of rental activity later falls below that level, unless the operator has filed returns for the immediately preceding three annual periods showing no rooms available for rental to transients (*i.e.*, guests other than permanent residents).

In addition, to ease the compliance burden on small operators, these amendments also reduce the filing requirements for certain operators. Effective for tax periods beginning on and after September 1 2004, operators of hotels having fewer than ten rooms or operators of fewer than ten apartments rented to guests and subject to the tax will be permitted to file on an annual basis. The annual return will be due on or before March 20 of each year covering the 12-month period ending on February 28 except that a return covering the short period beginning September 1, 2004 and ending February 28, 2005, will be due on or before March 21, 2005.

/s/ Martha E. Stark
Commissioner of Finance