

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-04(7)S
Sales Tax
April 2, 2004

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S031009A

On October 9, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from Northward Ho! Resort, P.O. Box 464, Bolton Landing, NY 12814.

The issues raised by Petitioner, Northward Ho! Resort, are:

- 1) Whether the rental of housekeeping units containing their own kitchen, bathroom, and sleeping rooms are subject to the imposition of sales tax.
- 2) Whether the fact that Petitioner is obligated to collect and remit sales tax on its adjoining motel rooms requires that Petitioner collect tax on the rentals of the housekeeping units.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner operates a resort facility that contains 17 motel and motel efficiency units, and 8 housekeeping units. An efficiency unit is the same as a motel unit except that it includes two stove-top burners, a sink, and refrigerator along with pots, pans and dishes. Daily maid service is provided for the motel and motel efficiency units, and they are rented on either a daily or a weekly basis. Each housekeeping unit contains its own kitchen, bathroom, and sleeping rooms. Petitioner does not offer any services for the housekeeping units, and they are rented on a weekly basis in the summer months. The resort has a coffee shop, pool, and lake beach access.

Applicable law and regulations

Section 1105(e) of the Tax Law imposes sales tax on, “The rent for every occupancy of a room or rooms in a hotel in this state, except that the tax shall not be imposed upon (1) a permanent resident, or (2) where the rent is not more than at the rate of two dollars per day.”

Section 527.9 of the Sales and Use Tax Regulations provides, in part:

(a) Imposition. A sales tax is imposed on every occupancy of any room or rooms in a hotel, motel or similar establishment at the combined statewide and local sales tax rate in effect at the situs of such establishment, except that the tax shall not apply to (1) the charges for occupancy by a permanent resident, or (2) where the charge is \$2 or less per day.

(b) Definitions. As used in this section, the following terms shall mean:

(1) Hotel. A building or portion of it, which is regularly used and kept open for the lodging of guests. The term hotel includes but is not limited to an apartment

hotel, a motel, bungalow or cottage colony, boarding house or club, whether or not meals are served.

* * *

(e) Nontaxable occupancy. The following occupancies are not subject to tax on hotel occupancy:

* * *

(5) Bungalows. A lessor of bungalows, who rents bungalows which are furnished living units limited to single-family occupancy, is not the operator of 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 by the lessor; 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 service of changing the linen, does not alter the nontaxable status of the rental charges.

Opinion

The Appellate Division has held that the charge for the use of a cabana (a unit with a private bathroom and kitchen in addition to sleeping rooms) was for the rental of real property and that the cabana constituted a bungalow or an apartment. See *Breezy Point Surf Club, Inc. v. State Tax Commission*, 67 AD2d 760.

The Tax Department concluded in *Juliana Motel*, Adv Op Comm T&F, May 23, 1991, TSB-A-91(44)S, that the rental of housekeeping and efficiency units for a term of at least one week was not subject to the imposition of sales tax in accordance with Section 527.9(e)(5) of the Sales and Use Tax Regulations, if no maid, food or other common hotel services or planned activities were provided to the occupants.

In this case, Petitioner's rental of housekeeping units for a term of at least one week will constitute the rental of real property and will not be subject to the imposition of sales tax, provided that Petitioner furnishes no maid, food or other common hotel services or planned activities to the occupants of these units. Petitioner indicates that it does not provide maid service for its housekeeping units, and that the available facilities for persons staying in these units are Petitioner's coffee shop, which is open to the public, a swimming pool, and lake beach access.

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Rentals of a bungalow, efficiency and condominium units at a hotel resort with access to a resort's other common hotel services, such as entertainment or planned activities, may constitute the provision of hotel services that make the charges for occupancy subject to tax.

In the present case, however, the privileges associated with the housekeeping units, i.e., the use of an on-site swimming pool and beach access to the lake, are similar to the privileges ordinarily provided with respect to renters at campgrounds, RV parks, and vacation house rentals not otherwise connected with hotel properties. In this instance, therefore, the rental of the housekeeping units does not constitute a taxable hotel occupancy. See Section 527.9(e)(5) of the Sales and Use Tax Regulations.

Petitioner is an operator of a hotel with respect to the rental of the 17 motel and motel efficiency units and must collect applicable state and local sales taxes on the charges for occupancy for such units, whether such units are rented for a period of a week or more or for some shorter period of occupancy. Additionally, when a housekeeping unit is rented for a period of less than a week, such rental is likewise subject to the sales tax imposed on hotel occupancy, and Petitioner must collect tax on such rentals.

DATED: April 2, 2004

/s/
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NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.