

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
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Sales Tax on Rent for Hotel Occupancy and the Exception for Permanent Residents

This memorandum is intended to answer questions that have been raised about the application of New York State and local sales taxes administered by the Tax Department on rent paid for hotel occupancy. Specifically, the questions have focused on the exception from the imposition of these taxes for occupancy by a permanent resident. The information set forth in this memorandum reflects existing Tax Department policy.

Sales tax on rent for hotel occupancy

A hotel operator must collect New York State and local sales taxes on the rent for every occupancy of a room or rooms in a hotel. However, these taxes are not imposed either on rent paid by a permanent resident or when the rent is \$2 a day or less. These taxes are imposed under sections 1105(e) (State's 4% tax), 1107 (New York City's 4% tax), and 1109 (Metropolitan Commuter Transportation District's (MCTD's) ¼ % tax) of Article 28 of the Tax Law and pursuant to the authority of Article 29 of the Tax Law. A *hotel* is a building, or portion of a building, which is regularly used and kept open as such for the lodging of guests. The term *hotel* includes but is not limited to an apartment hotel, a motel, boarding house or club, whether or not meals are served. *Occupancy* is the use or possession, or the right to the use or possession, of any room in a hotel. *Occupant* is a person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise. A person can be an individual or a business entity, such as a corporation, limited liability company or partnership. *Rent* is the consideration received for occupancy valued in money, whether received in money or otherwise. (See sections 1101(a),(c)(1), (2), (3), and (6) of the Tax Law.)

Permanent residency

For purposes of State and local sales taxes administered by the Tax Department (other than New York City's 4% tax), an occupant of a room or rooms in a hotel for at least 90 consecutive days is considered a permanent resident with regard to the period of such occupancy. For purposes of New York City's 4% tax, an occupant of a room or rooms in a hotel for at least 180 consecutive days is considered a permanent resident with regard to the period of such occupancy.

Determining whether a business qualifies as a permanent resident

It is common for a business to rent one or more rooms in a hotel for the purpose of offering the room or rooms to its employees, customers, clients or other persons. Such a business may combine the right to occupy one or more of the rooms in a package with tangible personal property and/or services; and then sell the package for a single price to a customer. For example, a tour operator may sell a package that includes the right to occupy a room in a hotel for two nights, tickets to a show, meals, and transportation.

For the purpose of determining whether a tour operator or other business qualifies as a permanent resident of a hotel, days that an employee, customer, or client of the business or other

person authorized by the business occupies a room for which the business pays rent to the hotel are considered days that the room is occupied by the business, provided that the employee, customer, client, or other person does not reimburse or pay the business for the right to occupy the room. In addition, days that a room or rooms rented by a business remain unoccupied (and for which no one reimburses the business) constitute days of occupancy by the business. However, days for which an employee, customer, or client of the business or other person pays or reimburses the business for the right to occupy the room or rooms, whether as part of a package or otherwise, are considered days that the room or rooms are occupied by that person and are not days of occupancy by the business.

Hotel operators must collect and remit sales taxes

When an occupant rents a hotel room or rooms, the hotel operator must collect from the occupant State and local sales taxes on the rent charged for the room or rooms. **The hotel operator must collect the taxes regardless of whether the room or rooms are rented under a contract which provides that the occupant will have the right to occupy the room or rooms for 90 or 180 consecutive days.** When the hotel operator files its sales tax return, the taxes required to be collected must be reported and paid to the Tax Department with the return.

Refunds for permanent residents

When 90 consecutive days of occupancy have been reached, the State and local sales taxes (other than New York City's 4% tax) paid with respect to the 90 days are refundable to the occupant. In New York City, only the State's 4% and MCTD's ¼% taxes are refundable to the occupant upon 90 days of continuous occupancy. Upon completion of 180 consecutive days of occupancy, New York City's 4% tax paid with respect to the 180 days is also refundable to the occupant. Once an occupant is considered a permanent resident of a room or rooms, no further tax is payable with respect to the room or rooms, provided that the days of consecutive occupancy are not interrupted. This is so, regardless of whether the right to occupy the room or rooms is granted under separate, successive contracts. Changing rooms in the same hotel does not interrupt the period of continuous occupancy. Therefore, for example, if an occupant occupies a particular room in a hotel for 70 consecutive days, and on the 71st day changes to a different room in the same hotel and occupies the new room for an additional 20 consecutive days, the person is a permanent resident of the hotel for purposes of the State and local sales taxes, other than the local sales tax imposed in New York City, which requires 180 days of consecutive occupancy. If an occupant becomes a permanent resident and the hotel operator refunds to the occupant the taxes previously paid, as described below, the hotel operator will take a credit on its sales tax return in an amount equal to the taxes refunded. If the hotel operator does not refund the tax to the occupant, the occupant may file a claim for refund directly with the Tax Department using Form AU-11, *Application for Credit or Refund of Sales or Use Tax*.

Responsibility of hotel operators

As a person required to collect tax, a hotel operator is personally liable for the sales tax collected or **required to be collected**. In determining whether to issue a refund and discontinue collecting tax from an occupant who claims to be a permanent resident, the hotel operator may rely upon its books and records to decide whether the claim of permanent residency is valid. However,

the Tax Department recommends that, if the hotel operator cannot rely on its books and records to make an objective and reasonable determination as to whether a particular occupant is, in fact, a permanent resident, **the hotel operator should:**

- **not issue a refund of the tax collected;**
- **continue to collect the tax from the occupant; and**
- **advise the occupant to request a refund directly from the Tax Department.**

Once the occupant provides documentation that establishes that the Tax Department granted such a refund request, and the hotel operator has no other reason to conclude that the occupant is not a permanent resident, **the hotel operator:**

- **should discontinue collecting the tax from that particular occupant until such time that it becomes apparent that the occupant is no longer a permanent resident; and**
- **may refund any tax that was paid that was not already refunded by the Tax Department and take a credit on its sales tax return in an amount equal to the tax refunded.**

Examples

Example 1: Company X contracted to rent a room in a hotel in New York City for one year, beginning on October 1, 2000. The hotel operator collected New York State, MCTD, and New York City sales taxes on the rent charged to Company X for the room. The room was used by Company X as follows:

<u>From</u>	<u>To</u>	<u>Status</u>
October 1, 2000	November 15, 2000	Occupied by clients of Company X, for no charge
November 16, 2000	November 30, 2000	Unoccupied
December 1, 2000	September 30, 2001	Occupied by employees of Company X, for no charge

- Company X is considered to be the occupant of the room for the entire rental period.

As of December 29, 2000, Company X met the 90-day requirement and is considered to be a permanent resident of the hotel for purposes of the State's 4% and MCTD's ¼% sales taxes. Therefore, such taxes collected from Company X up to that point may be refunded to Company X by the hotel operator or the Tax Department. No State or MCTD sales taxes are due with respect to the room from December 30, 2000, through the remainder of the rental period.

As of March 29, 2001, Company X met the 180-day requirement and is considered to be a permanent resident for the purpose of New York City's 4% sales tax. Therefore, such tax collected from Company X up to that point may be refunded to Company X by the hotel operator or the Tax Department. No New York City sales tax is due with respect to the room from March 30, 2001, through the remainder of the rental period.

Example 2: The facts are the same as in *Example 1*, except that the room was used as follows:

<u>From</u>	<u>To</u>	<u>Status</u>
October 1, 2000	November 15, 2000	Unoccupied
November 16, 2000	January 31, 2001	Occupied by clients of Company X, for a charge
February 1, 2001	September 30, 2001	Occupied by employees of Company X, for no charge

- Company X is considered to be the occupant of the room from October 1, 2000, to November 15, 2000, which is a period of 46 consecutive days.
- Company X is **not** considered to be the occupant of the room from November 16, 2000, to January 31, 2001, since it was occupied by its clients and they paid a charge to Company X.
- Company X is considered to be the occupant of the room from February 1, 2001, to September 30, 2001, which is a period of 242 consecutive days.

As of May 1, 2001, Company X met the 90-day requirement and is considered to be a permanent resident of the hotel for purposes of the State's 4% and MCTD's ¼% sales taxes. Therefore, such taxes collected from Company X for the period beginning February 1, 2001, and ending May 1, 2001, may be refunded to Company X by the hotel operator or the Tax Department. No State or MCTD sales taxes are due with respect to the room from May 2, 2001, through the remainder of the rental period.

As of July 30, 2001, Company X met the 180-day requirement and is also considered to be a permanent resident for the purpose of New York City's 4% sales tax. Therefore, such tax collected from Company X for the period beginning February 1, 2001, and ending July 30, 2001, may be refunded to Company X by the hotel operator or the Tax Department. No New York City sales tax is due with respect to the room from July 31, 2001, through the remainder of the rental period.

Example 3: XYZ Tours contracted to rent 10 rooms in a hotel in New York City for one year, beginning September 1, 2000. The hotel operator is required to collect New York State, MCTD, and New York City sales taxes on the rent charged to XYZ Tours for the rooms.

XYZ Tours sold tour packages to its customers which included the right of the customers to occupy such rooms. On any given day, at least one room was unoccupied. In no case was more than one room unoccupied for a period of at least 90 (or 180) consecutive days.

- XYZ Tours is **not** considered to be the occupant of any rooms for any day that XYZ's customers paid to occupy the room, regardless of whether the customer actually occupied the room.

- XYZ Tours is considered to be the occupant of one room for the entire rental period, since at least one room remained unoccupied on any given day and no XYZ customer had the right to occupy it. (NOTE: For permanent residency purposes, it is not necessary that the same room remain unoccupied for 90 (or 180) consecutive days, as long as any one of the rooms is unoccupied during such 90 (or 180) consecutive day period.)

As of November 29, 2000, XYZ Tours met the 90-day requirement and is considered to be a permanent resident of the hotel with respect to one room that remained unoccupied for 90 consecutive days for the purpose of the State's 4% and MCTD's ¼ % sales taxes. Therefore, any such taxes collected from XYZ Tours applicable to the period beginning September 1, 2000, and ending November 29, 2000, with respect to one room may be refunded by the hotel operator or the Tax Department. No State or MCTD sales taxes are due with respect to one room from November 30, 2000, through the remainder of the rental period.

As of February 27, 2001, XYZ Tours met the 180-day requirement and is considered to be a permanent resident of the hotel with respect to one room that remained unoccupied for 180 consecutive days for the purpose of New York City's 4% sales tax. Therefore, any New York City 4% sales tax collected from XYZ Tours applicable to the period beginning September 1, 2000, and ending February 27, 2001, with respect to one room may be refunded by the hotel operator or the Tax Department. No New York City sales tax is due with respect to one room from February 28, 2001, through the remainder of the rental period.