

S T A T E O F N E W Y O R K

8584--A

2011-2012 Regular Sessions

I N A S S E M B L Y

September 21, 2011

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to facilitating the compliance of room remarketers with their obligation to collect sales tax on their sales of occupancy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision (e) of section 1105 of the tax law, as amended
2 by section 4 of part AA of chapter 57 of the laws of 2010, is amended to
3 read as follows:
4 (e) (1) The rent for every occupancy of a room or rooms in a hotel in
5 this state, except that the tax shall not be imposed upon (i) a perma-
6 nent resident, or (ii) where the rent is not more than at the rate of
7 two dollars per day.
8 (2) [When] EXCEPT AS PROVIDED IN SUBDIVISION (R) OF SECTION ELEVEN
9 HUNDRED ELEVEN OF THIS PART, WHEN occupancy is provided, for a single
10 consideration, with property, services, amusement charges, or any other
11 items, the separate sale of which is not subject to tax under this arti-
12 cle, the entire consideration shall be treated as rent subject to tax
13 under paragraph one of this subdivision; provided, however, that where
14 the amount of the rent for occupancy is stated separately from the price
15 of such property, services, amusement charges, or other items, on any
16 sales slip, invoice, receipt, or other statement given the occupant, and
17 such rent is reasonable in relation to the value of such property,
18 services, amusement charges or other items, only such separately stated
19 rent will be subject to tax under paragraph one of this subdivision.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 S 2. Section 1111 of the tax law is amended by adding a new subdivi-
2 sion (r) to read as follows:

3 (R) (1) IN REGARD TO THE COLLECTION OF SALES TAX ON OCCUPANCIES BY
4 ROOM REMARKETERS, WHEN OCCUPANCY IS PROVIDED FOR A SINGLE CONSIDERATION
5 WITH PROPERTY, SERVICES, AMUSEMENT CHARGES, OR ANY OTHER ITEMS, WHETHER
6 OR NOT SUCH OTHER ITEMS ARE TAXABLE, THE RENT PORTION OF THE CONSIDER-
7 ATION FOR SUCH TRANSACTION SHALL BE COMPUTED AS FOLLOWS: EITHER THE
8 TOTAL CONSIDERATION RECEIVED BY THE ROOM REMARKETER MULTIPLIED BY A
9 FRACTION, THE NUMERATOR OF WHICH SHALL BE THE CONSIDERATION PAYABLE FOR
10 THE OCCUPANCY BY THE ROOM REMARKETER AND THE DENOMINATOR OF WHICH SHALL
11 BE SUCH CONSIDERATION PAYABLE FOR THE OCCUPANCY PLUS THE CONSIDERATION
12 PAYABLE BY THE REMARKETER FOR THE OTHER ITEMS BEING SOLD, OR BY ANY
13 OTHER METHOD AS MAY BE AUTHORIZED BY THE COMMISSIONER. IF THE ROOM
14 REMARKETER FAILS TO SEPARATELY STATE THE TAX ON THE RENT SO COMPUTED ON
15 A SALES SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT GIVEN TO THE OCCUPANT
16 IN THE MANNER PRESCRIBED BY PARAGRAPH TWO OF THIS SUBDIVISION OR FAILS
17 TO MAINTAIN RECORDS OF THE PRICES OF ALL COMPONENTS OF A TRANSACTION
18 COVERED BY THIS PARAGRAPH, THE ENTIRE CONSIDERATION SHALL BE TREATED AS
19 RENT SUBJECT TO TAX UNDER PARAGRAPH ONE OF SUBDIVISION (E) OF SECTION
20 ELEVEN HUNDRED FIVE OF THIS PART. NOTHING HEREIN SHALL BE CONSTRUED TO
21 SUBJECT TO TAX OR EXEMPT FROM TAX ANY SERVICE OR PROPERTY OR AMUSEMENT
22 CHARGE OR OTHER ITEMS OTHERWISE SUBJECT TO TAX OR EXEMPT FROM TAX UNDER
23 THIS ARTICLE OR PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS
24 CHAPTER. A ROOM REMARKETER'S RECORDS OF THE CONSIDERATION PAYABLE FOR
25 ALL COMPONENTS OF A TRANSACTION COVERED BY THIS PARAGRAPH ARE RECORDS
26 REQUIRED TO BE MAINTAINED FOR PURPOSES OF SUBDIVISION (A) OF SECTION
27 ELEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE.

28 (2) IN REGARD TO THE COLLECTION OF SALES TAX ON OCCUPANCIES BY ROOM
29 REMARKETERS, INCLUDING A TRANSACTION DESCRIBED IN PARAGRAPH ONE OF THIS
30 SUBDIVISION, THE REQUIREMENTS OF THE SECOND SENTENCE OF PARAGRAPH ONE OF
31 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS ARTICLE
32 SHALL BE DEEMED SATISFIED IF THE REMARKETER GIVES THE CUSTOMER A SALES
33 SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT OF THE PRICE ("INVOICE")
34 PRIOR TO THE CUSTOMER'S COMPLETION OF HIS OR HER OCCUPANCY, ON WHICH THE
35 AMOUNT OF TAX DUE UNDER THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF
36 ARTICLE TWENTY-NINE OF THIS CHAPTER IS STATED. THE ROOM REMARKETER MUST
37 KEEP EITHER A COPY OF THE INVOICE AS REQUIRED BY SUBDIVISION (A) OF
38 SECTION ELEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, OR ELECTRONIC
39 RECORDS THAT ACCURATELY REFLECT THE INFORMATION THAT IS ON THE INVOICE
40 PROVIDED TO THE CUSTOMER.

41 (3) IN REGARD TO THE REPORTING AND THE PAYMENT TO THE COMMISSIONER BY
42 ROOM REMARKETERS OF SALES TAX DUE ON OCCUPANCIES, SUBDIVISION (A) OF
43 SECTION ELEVEN HUNDRED THIRTY-SEVEN OF THIS ARTICLE SHALL BE READ TO
44 REQUIRE A ROOM REMARKETER TO REPORT SUCH SALES TAX DUE, INCLUDING IN
45 REGARD TO A TRANSACTION DESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION,
46 ON THE RETURN DUE FOR THE FILING PERIOD IN WHICH THE OCCUPANCY ENDS AND,
47 AT THE TIME OF FILING SUCH RETURN, TO PAY TO THE COMMISSIONER THE TOTAL
48 AMOUNT DESCRIBED BY SUCH SUBDIVISION (A).

49 S 3. Subdivision (e) of section 1119 of the tax law, as added by
50 section 5 of part AA of chapter 57 of the laws of 2010, is amended to
51 read as follows:

52 (e) Subject to conditions and limitations provided in this subdivi-
53 sion, a room remarketer shall be allowed a refund or credit against the
54 amount of tax collected and required to be remitted under section eleven
55 hundred thirty-seven of this article in the amount of the tax it paid to
56 an operator of a hotel under section eleven hundred four of this arti-

cle, where applicable, and subdivision (e) of section eleven hundred five of this article. Provided, however, that, in order to qualify for a refund or credit under this subdivision for any sales tax quarterly period, the room remarketer must, for that quarter, (1) be registered for sales tax purposes under section eleven hundred thirty-four of this article; (2) collect the taxes imposed by section eleven hundred four of this article, where applicable, and subdivision (e) of section eleven hundred five of this article; and (3) furnish the certificate of authority number of the operator to whom the applicant paid the tax in its application for refund or credit if required on that form or upon request. PROVIDED THAT IF THE ROOM REMARKETER REQUESTS THE OPERATOR'S CERTIFICATE OF AUTHORITY NUMBER AND IS NOT PROVIDED WITH THAT NUMBER, THE ROOM REMARKETER MAY SATISFY THIS REQUIREMENT BY PROVIDING THE OPERATOR'S NAME, BUSINESS ADDRESS, TELEPHONE NUMBER, AND THE ADDRESS OF THE HOTEL WHERE THE OCCUPANCY TOOK PLACE. An application for refund or credit under this subdivision must be filed with the commissioner within the time provided by subdivision (a) of section eleven hundred thirty-nine of this article. The application must be in the form prescribed by the commissioner. Where an application for credit has been filed, the applicant may immediately take the credit on the return that is due coincident with or immediately subsequent to the time that the applicant files the application for credit. However, the taking of the credit on the return is deemed to be part of the application for credit. The procedure for granting or denying the applications for refund or credit and review of those determinations shall be as provided in subdivision (e) of section eleven hundred thirty-nine of this article. An operator, including a room remarketer, who is paid tax by a room remarketer must upon request provide the remarketer with its certificate of authority number, provided that the operator's failure to do so does not change the requirement set forth in paragraph three of this subdivision.

S 4. Paragraph 4 of subdivision a of section 11-2502 of the administrative code of the city of New York, as amended by section 8 of part AA of chapter 57 of the laws of 2010, is amended to read as follows:

(4) (I) When occupancy is provided, for a single consideration, with property, services, amusement charges, or any other items, the separate sale of which is not subject to tax under this chapter, the entire consideration shall be treated as rent subject to tax under paragraph one of this subdivision; provided, however, that where the amount of the rent for occupancy is stated separately from the price of such property, services, amusement charges or other items on any sales slip, invoice, receipt, or other statement given the occupant and such rent is reasonable in relation to the value of such property, services, amusement charges, or other items, only such separately stated rent will be subject to tax under [paragraph one of] this subdivision.

(II) IN REGARD TO THE COLLECTION OF TAX ON OCCUPANCIES BY REMARKETERS, WHEN OCCUPANCY IS PROVIDED, FOR A SINGLE CONSIDERATION, WITH PROPERTY, SERVICES, AMUSEMENT CHARGES, OR ANY OTHER ITEMS, WHETHER OR NOT SUCH OTHER ITEMS ARE TAXABLE, THE RENT PORTION OF THE CONSIDERATION FOR SUCH SALE SHALL BE COMPUTED AS FOLLOWS: THE TOTAL CONSIDERATION FOR THE SALE MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH SHALL BE THE CONSIDERATION PAID TO THE HOTEL FOR THE OCCUPANCY AND THE DENOMINATOR OF WHICH SHALL BE THE CONSIDERATION PAID TO THE HOTEL FOR THE OCCUPANCY PLUS THE CONSIDERATION PAID TO THE PROVIDERS OF THE OTHER ITEMS BEING SOLD, OR BY ANY OTHER REASONABLE METHOD PURSUANT TO WHICH THE RENT PORTION OF CONSIDERATION WOULD BE NO LESS THAN THE COMPUTATION OF RENT PORTION OF CONSIDERATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH. NOTHING HEREIN

1 SHALL BE CONSTRUED TO SUBJECT TO TAX OR EXEMPT FROM TAX ANY SERVICE OR
2 PROPERTY OR AMUSEMENT CHARGE OR OTHER ITEMS OTHERWISE SUBJECT TO TAX OR
3 EXEMPT FROM TAX UNDER THIS CHAPTER.

4 S 5. Paragraph 5 of subdivision a of section 11-2502 of the adminis-
5 trative code of the city of New York, as amended by section 8 of part AA
6 of chapter 57 of the laws of 2010, is amended to read as follows:

7 (5) A room remarketer shall be allowed a refund or credit against the
8 taxes collected and required to be remitted pursuant to section 11-2505
9 of this chapter in the amount of the tax it paid to the operator of the
10 hotel or another room remarketer under [paragraph three of] this subdi-
11 vision. Provided, however, that in order to qualify for a refund or
12 credit under this paragraph with respect to any quarterly period, as
13 described in subdivision a of section 11-2504 of this chapter, the room
14 remarketer must, with respect to such quarter, (i) be registered for
15 hotel room occupancy tax purposes under section 11-2514 of this chapter,
16 and (ii) collect the taxes imposed by paragraphs two and three of this
17 subdivision. Subject to the conditions and limitations of this para-
18 graph, the provisions of section 11-2507 of this chapter shall apply to
19 refunds or credits under this paragraph.

20 S 6. Subdivision f of section 11-2502 of the administrative code of
21 the city of New York, as amended by local law number 43 of the city of
22 New York for the year 2009 and paragraph 2 as renumbered by section 9 of
23 part AA of chapter 57 of the laws of 2010, is amended to read as
24 follows:

25 f. The tax to be collected shall be stated [and charged] separately
26 from the rent [and shown separately on any record thereof, at the time
27 when the occupancy is arranged or contracted for and charged for and
28 upon every evidence of occupancy or any bill or statement or charge made
29 for said occupancy issued or delivered by the operator or room remarket-
30 er] ON A SALES SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT OF THE PRICE
31 ("INVOICE") GIVEN TO THE OCCUPANT PRIOR TO THE OCCUPANT'S COMPLETION OF
32 HIS OR HER OCCUPANCY AND BE VERIFIABLE FROM THE BOOKS AND RECORDS OF AN
33 OPERATOR OR ROOM REMARKETER RESPONSIBLE FOR COLLECTING AND REMITTING THE
34 TAX.

35 (1) Where an occupant rents a room directly from an operator, the tax
36 shall be paid by the occupant to the operator as trustee for and on
37 account of the city, and the operator shall be liable for the collection
38 of the tax on the rent and for the payment of the tax on the rent.

39 (2) The operator or room remarketer and any officer of any corporate
40 operator or room remarketer shall be personally liable for the portion
41 of the tax collected or required to be collected under this chapter, and
42 the operator shall have the same right in respect to collecting the tax
43 from the occupant, or in respect to nonpayment of the tax by the occu-
44 pant as if the tax were a part of the rent for the occupancy payable at
45 the time such tax shall become due and owing, including all rights of
46 eviction, dispossession, repossession and enforcement of any innkeeper's
47 lien that he or she may have in the event of nonpayment of rent by the
48 occupant; provided however, that the commissioner of finance shall be
49 joined as a party in any action or proceeding brought by the operator to
50 collect or enforce collection of the tax.

51 S 7. This act shall take effect September 1, 2012 and shall apply to
52 occupancies that commence on or after such date.