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

5732--A

2011-2012 Regular Sessions

I N S E N A T E

June 14, 2011

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- 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:

Section 1. Subdivision (e) of section 1105 of the tax law, as amended by section 4 of part AA of chapter 57 of the laws of 2010, is amended to read as follows:

(e) (1) 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 (i) a permanent resident, or (ii) where the rent is not more than at the rate of two dollars per day.

(2) [When] EXCEPT AS PROVIDED IN SUBDIVISION (R) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS PART, 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 article, 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.

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

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

(R) (1) IN REGARD TO THE COLLECTION OF SALES TAX ON OCCUPANCIES BY ROOM 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 TRANSACTION SHALL BE COMPUTED AS FOLLOWS: EITHER THE TOTAL CONSIDERATION RECEIVED BY THE ROOM REMARKETER MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH SHALL BE THE CONSIDERATION PAYABLE FOR THE OCCUPANCY BY THE ROOM REMARKETER AND THE DENOMINATOR OF WHICH SHALL BE SUCH CONSIDERATION PAYABLE FOR THE OCCUPANCY PLUS THE CONSIDERATION PAYABLE BY THE REMARKETER FOR THE OTHER ITEMS BEING SOLD, OR BY ANY OTHER METHOD AS MAY BE AUTHORIZED BY THE COMMISSIONER. IF THE ROOM REMARKETER FAILS TO SEPARATELY STATE THE TAX ON THE RENT SO COMPUTED ON A SALES SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT GIVEN TO THE OCCUPANT IN THE MANNER PRESCRIBED BY PARAGRAPH TWO OF THIS SUBDIVISION OR FAILS TO MAINTAIN RECORDS OF THE PRICES OF ALL COMPONENTS OF A TRANSACTION COVERED BY THIS PARAGRAPH, THE ENTIRE CONSIDERATION SHALL BE TREATED AS RENT SUBJECT TO TAX UNDER PARAGRAPH ONE OF SUBDIVISION (E) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART. NOTHING HEREIN SHALL BE CONSTRUED TO SUBJECT TO TAX OR EXEMPT FROM TAX ANY SERVICE OR PROPERTY OR AMUSEMENT CHARGE OR OTHER ITEMS OTHERWISE SUBJECT TO TAX OR EXEMPT FROM TAX UNDER THIS ARTICLE OR PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER. A ROOM REMARKETER'S RECORDS OF THE CONSIDERATION PAYABLE FOR ALL COMPONENTS OF A TRANSACTION COVERED BY THIS PARAGRAPH ARE RECORDS REQUIRED TO BE MAINTAINED FOR PURPOSES OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE.

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

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

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

(e) Subject to conditions and limitations provided in this subdivision, a room remarketer shall be allowed a refund or credit against the amount of tax collected and required to be remitted under section eleven hundred thirty-seven of this article in the amount of the tax it paid to 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

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

S 5. Paragraph 5 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:

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

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

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

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

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

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