

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-91 (3) S
Sales Tax
January 25, 1991

SPECIAL HOTEL OCCUPANCY TAX

Effective June 1, 1990, a 5% special hotel occupancy tax is imposed on every charge for occupancy of a room or suite of rooms (suite) in a hotel located in New York State when the charge for occupancy of the room or suite is at the rate of \$100 or more per day.

The special hotel occupancy tax is imposed on the occupant of the room or suite. The tax is 5% of the charge for occupancy, and is to be paid in addition to any state or local sales and use taxes, or any other taxes or charges imposed on hotel occupancy.

The following occupants are exempt from the special hotel occupancy tax:

- permanent residents of a hotel;
- employees of the federal government who are on official government business, provided the employee gives the hotel operator a properly completed Form ST-129 (or Form TP-156.8 which is used by members of congress to claim exemption from tax);
- employees of New York State or a political subdivision of New York State who are on official government business, provided the employee gives the hotel operator a properly completed Form AC 946;
- United Nations' agents or representatives who are on official business, provided the United Nations is the purchaser and payer of record and the hotel receives a properly completed Form DTF-950 or DTF-951;
- diplomatic and mission personnel who possess a valid tax exemption card issued by the United States Department of State or the American Institute in Taiwan, provided the diplomat or mission personnel gives the hotel operator a properly completed Form DTF-950 or DTF-951;
- an agent, representative or employee of an exempt Indian nation or tribe who is on official business for such nation or tribe, provided the hotel operator receives a properly completed Form ST-119.1, and provided that the Indian nation is the purchaser and payer of record;
- an agent, representative or employee of any other qualified exempt organization (such as charitable, scientific and educational organizations and veterans' posts), who is on official business for such organization, provided the hotel operator receives a properly completed Form ST-119.1, and provided the qualified exempt organization is the purchaser and payer of record.

A "hotel" is a public or private establishment that is regularly engaged in furnishing or providing lodging for guests, and includes accommodations such as hotels, motels, apartment hotels, inns, tourist homes, bed and breakfast lodgings, boarding houses, rooming houses, and clubs.

The term "hotel" does not include public or private facilities that are registered with the New York State Department of Social Services or Department of Mental Hygiene, and which operate as nursing homes, rest homes, convalescent homes, maternity homes or similar institutions; nor does the term include summer camps for children, college dormitories or apartments belonging to a school, and accommodations rented for at least one week as furnished living units limited to single-family occupancy where no maid, food or other common hotel services are provided. A room or suite that contains no sleeping facilities and that is used solely as a meeting place is a place of assembly, and is also not included in the definition of hotel.

The special hotel occupancy tax is imposed when the charge for occupancy of a room or suite is at the rate of \$100 or more per day. The total amount charged by the hotel for the use or possession of a room and its furnishings, and for the services accompanying the use of the room, constitute the charge for occupancy. The following are examples of services and accommodations, the charges for which are considered to be part of the charges paid for occupancy of a hotel room or suite:

- use and upkeep of a room's furnishings and fixtures (e.g., beds, tables, chairs, air conditioners, etc.);
- utilities (light, heat, water and basic telephone service, excluding separately stated per call charges for local or intrastate telephone calls, and separately stated charges for interstate telephone calls);
- repairs, decorating and maintenance;
- furnishing and laundering of linens;
- soap, shampoo and other grooming or personal hygiene aids;
- cable television service;
- maid service;
- grocery shopping service;
- newspaper delivery service;
- cleaning and refuse removal service;
- elevator service;

- majordomos, bellhops, doormen and similar services;
- secretary or desk service;
- switchboard operators; and
- mail service.

The amounts charged for these services are considered part of the charge for occupancy, whether the charges are included in a lump-sum charge for the room or suite, or are separately stated on the bill or receipt given to the hotel guest.

The following are examples of services and accommodations, the charges for which are not considered to be part of the charge for occupancy, provided the charges for such services and accommodations are separately stated on the bill or receipt that is given to the guest:

- fax or copy service;
- food and drink;
- room service; valet service; laundry service for personal apparel;
- entertainment (theatre ticket service, tours, cabaret/club admissions, show admissions etc.);
- transportation;
- use of recreational facilities and equipment (e.g., saunas, swimming pools, tennis courts, gymnasiums, lounge chairs, golf carts, tennis racquets, etc.);
- telephone service other than basic service (e.g., additional per call charges, long distance charges);
- garage/parking services; and
- safety deposit box rentals.

However, when a lump-sum charge for a room or suite includes one or more of these accommodations or services, the entire lump-sum charge, excluding a reasonable allowance for food and drink and room service, is considered to be the charge for occupancy.

When charges for food and drink or room service are included in a lump-sum charge for occupancy, the hotel can deduct a reasonable allowance for such food and drink or room service in arriving at the amount subject to the 5% special hotel occupancy tax. The following schedule can be used to allocate a percentage of the total charge for occupancy' to the cost of the meal and accompanying services:

<i>If the total charge includes:</i>	<i>Allocate to meals:</i>
Room, breakfast, lunch, dinner	50%
Room, breakfast, lunch	30%
Room, breakfast, dinner	40%
Room, breakfast	15%
Room, lunch, dinner	40%
Room, lunch	15%
Room, dinner	25%

A hotel offering a free continental breakfast (Juice, pastry and coffee) may not deduct a value for the breakfast in determining the charges for hotel occupancy subject to the special hotel occupancy tax, whether or not the charge for the breakfast is separately stated.

Any separately stated charges for food and drink, entertainment, local, interstate and intrastate telephone calls, valet service, etc., must be reasonable in relation to the service actually rendered and the property furnished in conjunction with that service.

Example 1. A guest stays at a hotel in New York State for seven days. The guest is billed as follows for the seven-day stay:

Room	\$ 700.00
Charge for extra person	140.00
Telephone (Interstate long distance)	58.00
Telephone (Intrastate long distance)	70.00
Laundry service (personal apparel)	<u>35.00</u>
Total charges	<u>\$1,003.00</u>

All of the charges listed, except the charges for interstate telephone service and the charge for laundry service, are subject to New York State and local sales tax. Only the \$700 charge for the room and the \$140 charge for the extra person are subject to the 5% special hotel occupancy tax. Assuming a combined state and local sales tax rate of 6%, the taxes due on the total charges are computed as follows:

Total charges	\$1,003.00
State and local sales tax:	
6% X \$910 (room \$700; charge for extra person \$140; intrastate long	

distance telephone service \$70)	54.60
Special hotel occupancy tax:	
(5% X \$840)	<u>42.00</u>
Total due	<u>\$ 1,099.60</u>

Example 2. The facts are the same as in Example 1, except that the charge for occupancy of the room, \$700, and the charge for the extra person, \$140, includes breakfast. The taxes due on the charges are computed as follows if the allocation schedule is used:

Total charges	\$1,003.00
State and local sales tax:	
6% X \$910	54.60
Special hotel occupancy tax:	
5% X \$714 (\$700 room rent plus \$140 for extra person, or \$840, less 15% meal allowance or \$126)	<u>35.70</u>
Total due	<u>\$1,093.30</u>

Example 3. A guest stays at a hotel in New York State for seven days; the charge for occupancy is \$700, including breakfast. Assuming a combined state and local sales tax rate of 6%, the taxes due on the total charges are computed as follows:

Total charges	\$ 700.00
State and local sales tax:	
6% X \$700	<u>42.00</u>
Total due	<u>\$742.00</u>

The charge for occupancy is not subject to the special hotel occupancy tax since such charge, after deduction for the meal allowance, is less than \$100 per day. This is determined as follows:

Total charges	\$700.00
Less: Meal allowance - 15% of \$700	<u>105.00</u>
Basis on which rate per day is to be computed	<u>\$595.00</u>
Rate per day: \$595 ÷ 7	<u>\$ 85.00</u>

Example 4. A hotel located in New York State offers a special off-season package that includes use of a suite for seven days and six nights, a continental breakfast each morning, 1 dinner, a complimentary bottle of champagne, a sightseeing tour, and round trip limousine service from the airport to the hotel. If the hotel charges a lump sum for these services and accommodations the entire amount, excluding a reasonable allowance for the dinner, constitutes the charge for occupancy and

is subject to the 5% special hotel occupancy tax if the charge is at the rate of \$100 or more per day.

If the hotel separately charges for the sightseeing tour and the round trip limousine service, then these services, along with the allowance for the dinner, will not be subject to the 5% special hotel occupancy tax.

When an organization that qualifies for exemption under section 1116(a)(4) of the Tax Law carries on its exempt activities in premises in which, as part of such activities, the organization operates a hotel, then the organization is not required to collect the special hotel occupancy tax from the occupants of its rooms or suites.

Example 5. A private university that is a qualified exempt organization rents part of its dormitory facilities to the public during school breaks; the dormitory facilities are operated, as part of the curriculum requirements, by the students enrolled in the university's hotel management degree program. The university is not required to collect the special hotel occupancy on the amounts charged its guests for occupancy, even when the charge for occupancy is at the rate of \$100 or more per day.

Determining The Rate Per Day

The special hotel occupancy tax is imposed when the charge paid for occupancy of a hotel room or suite is at the rate of \$100 or more per day. For these purposes, a day is 24 consecutive hours. Once the charges that constitute the charge for occupancy have been determined, the "daily rate" is determined as discussed below.

Hourly rentals. To determine if the charge for occupancy is subject to the 5% special hotel occupancy tax, multiply the rate charged per hour by 24 (total number of hours in a day). If the result is \$100 or more, the special hotel occupancy tax must be collected on the charge for occupancy; if the result is less than \$100, the charge for occupancy is not subject to the special hotel occupancy tax. The tax is imposed on each transaction where the rate for a 24-hour period is \$100 or more.

Example 6. A guest rents a room at a hotel in New York State for four hours at a rate of \$5 an hour, for a total charge of \$20. The charge does not include any meals or room service. To determine whether the charge is subject to the special hotel occupancy tax, the hourly rate (\$5) is multiplied by 24. The result, \$120, is the daily rate on which the hourly charge is based. Since the daily rate is \$100 or more, the hotel is

required to collect the 5% special hotel occupancy tax on the \$20 charged the guest.

Example 7;- The hotel in Example 4 rents the same room again during the same 24-hour period (day), and charges the second occupant \$5 per hour. The hotel is required to collect the 5% special hotel occupancy tax on this second rental as well.

Daily rentals. If the charge for a full day's occupancy of a room or suite equals or exceeds \$100, the special hotel occupancy tax is imposed on the charge paid for such occupancy. For these purposes, a full day's occupancy is 24 hours. If, due to time needed for cleaning and preparation of the room for occupancy, check-in or check-out time is such that the total number of hours for a single day's rental is less than 24, the occupancy will still be recognized as a full day's occupancy as long as the amount charged for the period from check-in to check-out is the same as the amount that would be charged for a full 24-hour period.

Example 8. A guest rents a room at a hotel in New York State for one day. Standard check-out time at the hotel is 11 a.m.; standard check-in time is 1 p.m., which allows time for the rooms to be cleaned and made ready for the next occupant. The guest checks in at 1 p.m. on Monday, and checks out at 11 a.m. on Tuesday. The hotel charges \$95 for the period, the same amount it would have charged for an additional day had the guest stayed and checked out at 11 a.m. on Wednesday. Therefore, the occupancy is considered to be for a full day and is not subject to the special hotel occupancy tax since the daily rate is less than \$100.

Example 9. A hotel located in New York State rents a suite for two days, Monday through Wednesday, with no meals or extras included. Standard check-in time at the hotel is 1 p.m.; standard check-out time is 11 a.m. A guest checks in at 1 p.m. on Monday and checks out at 11 a.m. on Wednesday. The charge for Monday is \$95, and the charge for Tuesday is \$105. The hotel is required to collect the 5% special hotel occupancy tax on the \$95 charged the guest for Monday since the amount that would be charged for a 24-hour period is \$100 or more. The special hotel occupancy tax is also due on the \$105 charge for Tuesday.

Weekly, monthly, and similar rentals. When the charge for occupancy is based on a term of one week or longer, the rate per day is computed by dividing the total number of days of occupancy into the total amount charged for the period of occupancy.

Example 10. A hotel located in New York State rents rooms by the week. The charge for a weekly rental is \$750, which does not include any meals or other extras.

The rate per day is determined by dividing the total amount of rent paid (\$750) by seven. The result, \$107.14, is \$100 or more, so the total amount paid for occupancy is subject to the special hotel occupancy tax.

Example 11. A hotel located in New York State rents a hotel room for the months of March and April at the rate of \$3,000 per month. The rate per day for the month of March is $1/31$ of \$3,000, or \$96.77, and the special hotel occupancy tax is not applicable. The rate per day for the month of April is $1/30$ of \$3,000, or \$100 per day, and the special hotel occupancy tax is applicable.

Example 12. A hotel located in New York State rents a suite of rooms for a three-month term (March, April and May) for \$9,000. The rate per day is $1/92$ of \$9,000, or \$97.83, and the special hotel occupancy tax is not applicable.

Package rentals. When a hotel offers a package rental (for example, three nights and two days for \$275), the rate per day is determined by dividing the number of 24 hour periods, including any portion of a 24-hour period, into the total charge for occupancy. If a package deal includes a tour, a cruise, a shopping spree or other extras, the charge for the extras is included in the charge paid for hotel occupancy unless the charges for the extras are separately stated. If a package deal includes meals, the hotel can deduct a reasonable allowance for food and drink in arriving at the amount subject to the special hotel occupancy tax.

Example 13. A hotel offers a rental package for two nights which includes two meals and tickets to the local light festival. The charge for the entire package is \$240; there is no separate charge made for the meals or the tickets to the festival. To determine the rate per day, the hotel should first deduct from the \$240 charge a reasonable allowance for the two meals included in the rental package. The balance is then divided by two (for the two twenty-four hour periods [nights]); if the result is \$100 or more, then the entire charge paid for the package, excluding the amount allocated to the meals, is subject to the 5% special hotel occupancy tax.

Other rentals. When a rental is not classified as hourly, daily, weekly, monthly, etc., such rental will be treated as hourly for purposes of the special hotel occupancy tax, and the daily rate will be computed by determining the hourly rate and multiplying that hourly rate by 24. When the daily rate is determined to be \$100 or more, the special hotel occupancy tax is applicable.

Example 14. A hotel offers a rental plan that it calls "The Businessman's Special," under which a room can be rented for a 12-hour period, either 8 p.m. to 8 a.m., or 8 a.m. to 8 p.m. For purposes of the special hotel occupancy tax, the charge for the 12-hour period is divided by 12 to determine the hourly rate, and the daily rate is determined by multiplying the hourly rate by 24. If the daily rate is determined to be \$100 or more, the special hotel occupancy tax is applicable.

Permanent Residents

If the occupant of the room or suite is a permanent resident of the hotel, the special hotel occupancy tax is not imposed on the charge paid for hotel occupancy. For purposes of the special hotel occupancy tax, a permanent resident is one who has occupied a room or suite in the hotel for at least 90 consecutive days. The occupant's status for purposes of the special hotel occupancy tax is not determined by any other rules or definitions that may apply to taxes imposed on hotel occupancy.

Example 15. Onondaga County imposes a tax on hotel occupancy, which the county collects and administers. For purposes of the county's tax, a person is a permanent resident if he or she occupies a room or suite in the hotel for at least 30 consecutive days. Even though an occupant may be considered a permanent resident for purposes of the county's tax on hotel occupancy by occupying a room or suite in a hotel for 30 consecutive days, that person is not a permanent resident for purposes of the special hotel occupancy tax until he or she has occupied a room or suite in the hotel for at least 90 consecutive days.

When the charge paid for hotel occupancy is \$100 or more per day, the hotel operator must collect the 5% special hotel occupancy tax from the occupant until the occupancy reaches 90 days. When continuous occupancy reaches 90 days, the 5% special hotel occupancy tax is refundable to the occupant.

If the tax that has been collected has been paid to the Tax Department, the operator of the hotel can refund the tax to the occupant and claim a credit on the next return filed for the hotel, or the occupant can apply directly to the Tax Department for a refund by filing Form AU-11 within 3 years of the date the tax was payable to the Department by the hotel.

If the tax that has been collected has not been paid over to the Tax Department, then the hotel operator can simply refund such tax to the occupant when continuous occupancy reaches 90 days.

Transitional Provisions

The 5% special hotel occupancy tax is imposed on any occupancy of a hotel room or suite occurring on or after June 1, 1990.

Where charges for hotel occupancy are billed on an hourly or daily basis, then the 5% special hotel occupancy tax applies to all such charges for occupancy of a room or suite on or after June 1, 1990 if the charges are \$100 or more per day.

Where charges for hotel occupancy are billed on other than an hourly or daily basis, and such charges are at the rate of \$100 or more per day, the 5% special hotel occupancy tax applies only to that portion of the bill that covers days falling on or after June 1, 1990.

When to Collect and Remit the Tax

The special hotel occupancy tax is to be collected at the same time that the rent for the room or suite is due.

The tax is to be reported on Schedule A and remitted with the sales tax return filed either quarterly or annually, depending on the hotel operator's filing frequency.