



Legislation Text

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Int. No. 1012

By Council Members Weprin, Fidler and James (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to the tax on the occupancy of hotel rooms.

Be it enacted by the Council as follows:

Section 1. Subdivision 7 of section 11-2501 of the administrative code of the city of New York is amended to read as follows:

7. "Rent." The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, including any service and/or booking fees that are a condition of occupancy, and also any amount for which credit is allowed by the operator or room remarketer to the occupant, without any deduction therefrom whatsoever.

§2. Section 11-2501 of the administrative code of the city of New York is amended by adding three new subdivisions 12, 13 and 14 to read as follows:

12. "Room remarketer." Any person, excluding the operator, having any right, access, ability or authority, through an internet transaction or any other means whatsoever, to offer, reserve, book, arrange for, remarket, distribute, broker, resell, or facilitate the transfer of rooms the occupancy of which is subject to tax under this chapter.

13. "Net rent." The rent received by an operator from a room remarketer.

14. "Additional rent." The excess of the rent received from an occupant by a room remarketer over the net rent.

§3. Section 11-2502 of the administrative code of the city of New York, paragraph 3 of subdivision a as amended by local law number 65 for the year 2008, paragraph 4 of subdivision a as separately amended by chapters 29 and 69 of the laws of 1986, subdivision b as amended by local law number 43 for the year 1990, subdivision c as added by chapter 454 of the laws of 1998, subdivision d as added by local law number 73 for the year 2001, and subdivision j as amended by chapter 454 of the laws of 1998, is amended to read as follows:

§11-2502 Imposition of tax.

a. (1) On and after July first, nineteen hundred seventy until and including August thirty-first, nineteen hundred eighty, there is hereby imposed and there shall be paid a tax for every occupancy of each room in a hotel in the city of New York at the rates set forth in, and determined in accordance with the following table:

If the rent per day for the room is:	The tax is:
Less than \$10	\$.25 per day
\$10 or more, but less than \$15	.50 per day
\$15 or more, but less than \$20	.75 per day
\$20 or more	1.00 per day

(2) On and after September first, nineteen hundred eighty, there is hereby imposed and there shall be paid a tax for every occupancy of each room in a hotel in the city of New York at the rates set forth in, and determined in accordance with, the following table:

If the rent per day for the room is:	The tax is:
\$10 or more, but less than \$20	\$.50 per day
\$20 or more, but less than \$30	\$1.00 per day
\$30 or more, but less than \$40	\$1.50 per day
\$40 or more	\$2.00 per day

Where a person occupies a room for less than a full day and pays less than the rent for a full day, the tax shall nevertheless be the same amount as would be due had such person occupied the room for a full day at the rent for a full day.

(3) In addition to the tax imposed by paragraph two of this subdivision, there is hereby imposed and there shall be paid a tax for every occupancy of each room in a hotel in the city of New York (A) at the rate of five percent of the rent or charge per day for each such room up to and including August thirty-first, nineteen hundred ninety, (B) at the rate of six percent of the rent or charge per day for each such room on and after September first, nineteen hundred ninety and before December first, nineteen hundred ninety-four, (C) at the rate of five percent of the rent or charge per day for each such room on and after December first, nineteen hundred ninety-four and before March first, two thousand nine, (D) at the rate of five and seven-eighths percent of the rent or charge per day for each such room on and after March first, two thousand nine and before December first, two thousand eleven, and (E) at the rate of five percent of the rent or charge per day for each such room on and after December first, two thousand eleven.

(4) Where the occupancy of a room is reserved, booked or otherwise arranged for by a room remarketer, the tax imposed by paragraph three of this subdivision shall be determined based on the rent received from the occupant by the room remarketer. In such a transaction, the room remarketer shall collect from the occupant and remit to the operator that portion of the tax that is determined based upon the net rent, and the operator shall pay such portion of the tax to the commissioner of finance. The room remarketer shall collect from the occupant and pay to the commissioner of finance that portion of the tax that is determined based upon the additional rent.

(5) Where the rent is paid or charged or billed, or falls due on either a weekly, monthly or other term basis, the daily rent upon which the tax is determined shall be the result obtained by dividing the rent for such term by the number of days in such term. Where the rent is for more than one room, including but not limited to a suite of rooms, the daily rent per room upon which tax is determined shall be calculated by

multiplying the daily rent for the group of rooms by a fraction, the numerator of which shall be the daily rent for the particular room, or a similar room, when such room is rented alone with similar bath facilities, and the denominator of which shall be the total of the daily rent for the individual rooms in the group of rooms, or similar rooms, when such rooms are rented alone with similar bath facilities. In any case in which it is not possible to determine the daily rent per room in the foregoing manner, the commissioner of finance shall prescribe methods for making such determination.

b. (1) No tax shall be imposed hereunder upon a permanent resident.

(2) For purposes of this subdivision, an occupant who is eligible to request and has requested a lease pursuant to the provisions of paragraph two of subdivision (a) of section 2522.5 of the rent stabilization regulations promulgated by the division of housing and community renewal of the state of New York (title nine, subtitle S, chapter VIII of the official compilation of codes, rules and regulations of the state of New York), shall tentatively be accorded the status of permanent resident as of the date of such request, notwithstanding that such occupant has not met the one hundred eighty-consecutive-day requirement contained in subdivision eight of section 11-2501 of this chapter as of such date. In the case of such an occupant, the operator or room remarketer shall not collect the taxes imposed by this chapter for any day, commencing with the date such lease is requested, which falls within a period of continuous occupancy by such occupant of a room or rooms in the hotel. Provided, however, if such occupant ceases to occupy a room or rooms in the hotel prior to the completion of one hundred eighty consecutive days of occupancy, any taxes not collected theretofore by reason of the provisions of this paragraph shall become immediately due and payable on the date of cessation of occupancy and shall be collected by the operator or room remarketer from such occupant. In the event, however, that the operator or room remarketer is unable to collect such taxes from the occupant, the operator or room remarketer shall not be liable to the city for such taxes. The provisions of this paragraph shall apply with respect to leases requested on or after September first, nineteen hundred ninety.

c. No tax shall be imposed hereunder upon any organization described in subdivision (a) of

section eleven hundred sixteen of the tax law to the extent such organization is not subject to the tax imposed under subdivision (e) of section eleven hundred five of the tax law.

d. (1) No tax shall be imposed hereunder upon any person occupying any room or rooms in a hotel solely and directly as a result of such person's involuntary displacement from premises by the attack on the World Trade Center on September eleventh, two thousand one, provided such premises were not subject to the tax imposed by this section or the tax imposed under section eleven hundred seven of the tax law.

(2) Where an occupant claims exemption from the tax under the provisions of paragraph one of this subdivision, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a signed written statement describing the specific circumstances providing the basis for such claim and containing such other information as the commissioner of finance may require. The operator shall retain such statement and provide it to the commissioner of finance upon request.

e. Where any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on [propaganda] propaganda, or otherwise attempting to influence legislation, carries on its activities in furtherance of any of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel, occupancy of rooms in said premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder. Nothing in this subdivision shall be deemed to include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of [it] its profits are payable to one or more organizations described in this subdivision.

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[, and] or room remarketer.

(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 [thereof] of the tax on the rent and for the payment of the tax on the rent.

(2) Where an occupant rents a room that has been reserved, booked or otherwise arranged for by a room remarketer, the tax to be collected on and the portion of the tax attributable to the rent, the net rent and any additional rent shall be stated separately on any bill or statement or charge made for said occupancy issued or delivered by the room remarketer to the occupant. Tax on the net rent shall be paid by the occupant to the room remarketer and paid by the room remarketer to the operator as trustee for and on account of the city. The operator shall be liable for the collection of the tax on the net rent and for the payment of the tax on the net rent. Tax on any additional rent charged to the occupant by the room remarketer shall be paid by the occupant to the room remarketer as trustee for and on account of the city. The room remarketer shall be liable for the collection of tax on the net rent and on the additional rent and for the payment of the tax on the net rent and the additional rent, provided, however, if a room remarketer demonstrates that it has paid to the operator the portion of the tax based upon the net rent, the room remarketer will not be liable for payment of such portion of the tax to the commissioner of finance.

(3) 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.

g. Where the occupant has failed to pay and the operator or room remarketer has failed to collect a tax as imposed by this chapter, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the commissioner of finance, and it shall be the duty of the occupant to file a return thereof with the commissioner of finance and to pay the tax imposed therein to the commissioner of finance within fifteen days after such tax was due.

h. The commissioner of finance may, wherever he or she deems it necessary for the proper enforcement of this chapter, provide by regulation that the occupant shall file returns and pay directly to the commissioner of finance the tax herein imposed, at such times as returns are required to be filed and payment over made by the operator or room remarketer.

i. The tax imposed by this chapter shall be paid upon any occupancy on and after July first, nineteen hundred seventy, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such effective date. Where rent is paid, or charged or billed, or falls due on either a weekly, monthly, or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after July first, nineteen hundred seventy, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days falling within said period, to the total number of days covered thereby. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the commissioner of finance may by regulation provide for credit and/or refund of the amount of such tax upon application therefor as provided in section 11-2507 of this chapter.

j. For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator, the room remarketer, or the occupant. Where an occupant claims exemption from the tax under the provisions of subdivision c of this section, the rent shall be deemed taxable hereunder unless the operator or room remarketer

shall receive from the occupant claiming such exemption a copy of the exempt organization certificate that is necessary to obtain exemption from the tax imposed under subdivision (e) of section eleven hundred five of the tax law, together with a certificate duly executed by the organization named in such certificate certifying that the occupant is its agent, representative or employee and that his or her occupancy is paid or to be paid by, and is necessary or required in the course of or in connection with the affairs of said organization.

k. No operator or room remarketer shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this chapter is not considered as [an element in] a mandatory addition to the rent charged to the occupant.

§4. Section 11-2503 of the administrative code of the city of New York is amended to read as follows:

§11-2503 Records to be kept. Every operator and every room remarketer shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the commissioner of finance may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the commissioner of finance or his or her duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner of finance may consent to their destruction within that period or may require that they be kept longer.

§5. Subdivision a of section 11-2504 of the administrative code of the city of New York is amended to read as follows:

a. Every operator and every room remarketer shall file with the commissioner of finance a return of occupancy and of rents, and of the taxes payable thereon, for the quarterly periods ending on the last day of February, May, August and November of each year. Such returns shall be filed within twenty days after the end of the quarterly period covered thereby. The commissioner of finance may permit or require returns to be made by other periods and upon such dates as he or she may specify. If the commissioner of finance deems it necessary in order to insure the payment of the tax imposed by this chapter, he or she may require returns to be

made for shorter periods than those prescribed pursuant to the foregoing provisions of this subdivision and upon such dates as he or she may specify.

§6. Section 11-2505 of the administrative code of the city of New York is amended to read as follows:

§11-2505 Payment of tax. At the time of filing a return of occupancy and of rents each operator and room remarketer shall pay to the commissioner of finance the taxes imposed by this chapter upon the rents required to be included in such return, as well as all other moneys collected by the operator or room remarketer acting or purporting to act under the provisions of this chapter, even though it be judicially determined that the tax collected is invalidly imposed. All the taxes for the period for which a return is required to be filed shall be due from the operator or room remarketer and payable to the commissioner of finance on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of rents and the taxes due thereon. Where the commissioner of finance in his or her discretion deems it necessary to protect revenues to be obtained under this chapter he or she may require any operator or room remarketer required to collect the tax imposed by this chapter to file with him or her a bond, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as the commissioner of finance may fix, to secure the payment of any tax and/or penalties and interest due or which may become due from such operator or room remarketer. In the event that the commissioner of finance determines that an operator or room remarketer is to file such bond he or she shall give notice to such operator or room remarketer to that effect specifying the amount of the bond required. The operator or room remarketer shall file such bond within five days after the giving of such notice unless within such five days the operator or room remarketer shall request in writing a hearing before the commissioner of finance at which the necessity, propriety and amount of the bond shall be determined by the commissioner of finance. Such determination shall be final and shall be complied with within fifteen days after the giving of notice thereof. In lieu of such bond, securities

approved by the commissioner of finance or cash in such amount as he or she may prescribe, may be deposited which shall be kept in the custody of the commissioner of finance who may at any time without notice to the depositor apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him or her at public or private sale without notice to the depositor thereof.

§7. Subdivision a of section 11-2507 of the administrative code of the city of New York, as amended by chapter 808 of the laws of 1992, is amended to read as follows:

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if written application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied by the commissioner of finance, he or she shall state his or her reasons therefor and give notice thereof to the taxpayer in writing. Such application may be made by the occupant, operator, room remarketer or other person who has actually paid the tax or portion of the tax to the commissioner of finance. Such application may also be made by an operator or room remarketer who has collected and paid over such tax or portion of such tax to the commissioner of finance provided that the application is made within one year of the payment by the occupant to the operator or room remarketer, but no actual refund of moneys shall be made to such operator or room remarketer until he or she shall first establish to the satisfaction of the commissioner of finance, under such regulations as the commissioner of finance may prescribe, that he or she has repaid to the occupant the amount for which the application for refund is made. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

§8. Section 11-2508 of the administrative code of the city of New York is amended to read as follows:

§11-2508 Reserves. In cases where the occupant [or], operator or room remarketer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to

review a determination adverse to such occupant [or], operator or room remarketer on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§9. Subdivisions a and b of section 11-2510 of the administrative code of the city of New York are amended to read as follows:

a. Whenever any operator or room remarketer, or any officer of a corporate operator or room remarketer, or any occupant or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this chapter as therein provided, the corporation counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that any such operator, room remarketer, officer, occupant or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax, penalties or interest might be satisfied, and that any such tax, penalty or interest will not be paid when due, he or she may declare such tax, penalty or interest to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding him or her to levy upon and sell the real and personal property of the operator or room remarketer or officer of a corporate operator or room remarketer or of the occupant or other person liable for the tax, which may be found within the city for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and

interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant such sheriff shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

§10. Subdivision 6 of section 11-2511 of the administrative code of the city of New York is amended to read as follows:

6. To require any operator within the city to keep detailed records of the nature and type of hotel maintained[,] and the nature and type of service rendered, and to require any operator or room remarketer to keep detailed records of the rooms available and rooms occupied daily, leases or occupancy contracts or arrangements, rents received, charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this chapter, and to furnish such information upon request to the commissioner of finance;

§11. Section 11-2514 of the administrative code of the city of New York is amended to read as follows:

§11-2514 Registration. By June thirtieth, nineteen hundred seventy, or in the case of operators or room remarketers commencing business or opening new hotels after such date, within three days after such commencement or opening, or in the case of room remarketers doing business on the effective date of the local

law that added this phrase, within three days of such effective date, every operator or room remarketer shall file with the commissioner of finance a certificate of registration in a form prescribed by the commissioner of finance. The commissioner of finance shall within five days after such registration issue without charge to each operator or room remarketer a certificate of authority empowering such operator or room remarketer to collect the tax from the occupant and duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel or room remarketer to which it is applicable. Such certificates of authority shall be prominently displayed by the operator or room remarketer in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the commissioner of finance upon the cessation of business at the hotel named [or], upon its sale or transfer, or upon cessation of business of the named room remarketer.

§12. Subdivision h of section 11-2515 of the administrative code of the city of New York, as amended by chapter 765 of the laws of 1985, is amended to read as follows:

(h) Miscellaneous. (1) Officers of a corporate operator or room remarketer and partners in a partnership which is an operator or room remarketer shall be personally liable for the tax or portion of such tax collected or required to be collected by such corporation or partnership under this chapter, and subject to the penalties and interest imposed by this section.

(2) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

(3) Cross-reference: For criminal penalties, see chapter forty of this title.

§13. This local law shall take effect on the first day of the first hotel occupancy tax quarterly period that begins on March first, June first, September first or December first at least thirty days after the day on which this local law shall have become law and shall apply to rent, or any portion thereof, paid on or after

the effective date of the law.