

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-15(11)S
Sales Tax
March 12, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130903B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] “Petitioner”. Petitioner asks whether its service of providing temporary accommodations to students and interns constitutes operating a “hotel” for the purposes of New York State and local sales and use taxes.

We conclude that the accommodations in this case do not qualify as a hotel and are not subject to State and local sales and use taxes.

Facts

Petitioner is a limited liability company, organized in New York State, offering temporary housing to international students and interns traveling in New York State and New York City. Petitioner entered into a contract with a New York City-area college to operate and rent out rooms in one of the college’s former residence halls. The housing is marketed specifically to international students and interns moving to New York City. To obtain housing, the occupant must either be enrolled at a New York State-accredited school or be enrolled in a bona fide internship program. A valid student ID is generally necessary to gain access to the building.

Accommodations consist of a room with one or two single bed(s) and some basic furnishings, such as a chest of drawers, mirror, sink, refrigerator, and sometimes a desk. No telephones or televisions are provided in the rooms. Individual rooms do not contain a bathroom or cooking facilities. Shared bathrooms are available on each floor and there is a single communal kitchen available for use in the building. Each room is supplied, at the beginning of the stay, with sheets, towels, a blanket, and a pillow, but no linen, laundry, or housekeeping services are provided. The occupants have access to a common area on the first floor with internet-ready computers, but no organized entertainment is provided in this area. Main-desk services, such as security, mail, and message retrieval at a lobby desk are provided, but no concierge-type services are included.

All booking is done via the Petitioner’s website and accommodations can be booked on an individual or group basis. Occupants pay an upfront deposit and non-refundable registration fee to complete a booking. Rent for the first month is due prior to arrival and further charges are due at the beginning of each subsequent month. Rent is expressed and calculated on a per-week basis, but no stays of less than 30 days are permitted. Occupants do not sign a lease at any point, but must agree upon booking to a set of terms and conditions, including two weeks written notice before terminating a stay. Occupants are given a set of “House Rules and Regulations” before arrival and violation of the rules can result in immediate dismissal from the housing. Occupants are liable for any damage beyond normal wear and tear and also assume responsibility for any loss or damage to their own property during their stays.

Analysis

Tax Law § 1105(e)(1) imposes a sales tax on “[t]he 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.” *See also* 20 NYCRR § 527.9.

The term “hotel” is defined in the sales tax regulations (20 NYCRR § 527.9(b)(1)) as:

[A] building, or portion of it, that is regularly used and kept open for the lodging of guests. The term "hotel" includes, but is not limited to, an apartment hotel, a motel, bungalow or cottage colony, boarding house, or club, whether or not meals are served. A building, or portion of the building, falls within this definition if, among other factors:

(i) sleeping accommodations are provided for the lodging of paying occupants on a regular basis;

(ii) typical occupants are transients or travelers;

(iii) housekeeping, linen, or other customary hotel services are provided for occupants; and

(iv) the relationship between the operator of the establishment and the occupant is that of an innkeeper and guest, not that of a landlord and tenant ("e.g.," the occupant does not have an exclusive right or privilege with respect to any particular room or rooms, but instead merely has an agreement for the use or possession of the room or rooms).

Petitioner’s accommodations do not meet the third element of this definition. Petitioner is not offering housekeeping, linen or other customary hotel services. The occupants are provided with bedding when they first arrive, but the occupants are responsible for laundry and general cleanliness of the room. There is no restaurant or other food service provided, nor does Petitioner offer any of the other customary hotel services (e.g., planned activities, concierge service, valet parking). *See* TSB-A-91(44)S (rental of efficiency units was not subject to sales tax if no maid, food, or other common hotel services are provided). Taking all these factors together, we conclude that Petitioner is not operating a hotel within the meaning of the Sales and Use Tax Regulations and the rentals are not subject to New York State local sales and use taxes.

DATE: March 12, 2015

/S/

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regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.