

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-15(38)S
Sales Tax
November 13, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130401A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether it is required to collect sales tax on its charges to a customer to rent, for two days or up to a month or longer, a furnished single family home, condominium, or apartment (a) owned by Petitioner, (b) held by Petitioner under a lease, or (c) managed by Petitioner, and none of which are part of a hotel, motel, or other lodging facility.

We conclude that Petitioner's rental units are not rooms in a hotel and its charges to rent the units without any "hotel" services are not subject to the State and local sales taxes administered by the Department.

Facts

Petitioner currently rents out eight furnished units in Onondaga and Cayuga Counties to the public. Five of the units are one-family dwellings owned by Petitioner or its principal shareholder, two are condominium units, and one is an apartment. The two condominium units are not owned by Petitioner or a related entity, but are leased to Petitioner for a term in excess of a year. The apartment is managed by Petitioner on behalf of its owner. The units are not part of a hotel, motel, or other lodging facility. All of the units are single-family occupancy and are rented furnished. In addition, linens are provided, but the linens are not changed. There is no maid service or food or concierge service. Petitioner does not provide entertainment, planned activities, or transportation services. There is no restaurant, vending machine, or other food service provided in connection with the rental units.

The rental periods are for a minimum of two nights, up to periods of a month or longer. The rentals are advertised to the general public through Petitioner's own website and other publicly accessible websites, as well as by word of mouth. Customers pay the rental charges to Petitioner in all cases, including the rental of the units that Petitioner leases from, or manages for, others.

Analysis

With certain exceptions not relevant here, sales tax is imposed on the rent for every occupancy of a room or rooms in a hotel. *See* Tax Law § 1105(e). "Hotel" means a building or portion of it which is regularly used and kept open as such for the lodging of guests, and includes an apartment hotel, a motel, boarding house, or club, whether or not meals are served. *See* Tax Law § 1101(c)(1).

A building, or portion of the building, falls within the definition of “hotel” 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). However, sales tax is not imposed on rentals of real property. A bungalow or similar furnished living unit limited to a single-family occupancy is not a hotel, and thus not subject to the sales tax on hotel occupancy, provided no housekeeping, food, or other common hotel services, such as entertainment or planned activities, are provided by the lessor. The furnishing of linen by the lessor without the service of changing the linen does not alter the nontaxable status of any rental charges. *See* 20 NYCRR § 527.9(b)(1), (e)(3)(ii), and (e)(5). Rent received for occupancy of a bungalow or similar living unit would be subject to tax if the lessor provides any of these services, entertainment, or planned activities. *See* TSB-M-12(4)S.

Each of Petitioner’s rental units is for single-family occupancy. Petitioner does not provide any maid service, food or concierge service, or transportation services. Nor does it provide any entertainment, planned activities, or restaurant, vending machine, or other food service in connection with the rentals. While Petitioner does provide linens, it does not change the linens. Therefore, Petitioner’s rental units are not rooms in a hotel and its charges to rent the units without any of the described services are not subject to State sales tax. Nor are its charges subject to county or city sales taxes imposed pursuant to the authority of Tax Law § 1210. This opinion does not address the taxability of Petitioner’s charges under a hotel occupancy tax imposed and administered by a locality itself.

DATED: November 13, 2015

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, 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.