

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

TSB-A-87 (29)S  
Sales Tax  
August 31, 1987

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S870506A

On May 6, 1987, a Petition for Advisory Opinion was received from Bed & Breakfast U.S.A., Ltd, 129 Grand St., Croton-on-Hudson, New York 10520.

The issue raised is whether a "bed and breakfast" booking agency which operates in the following manner is required to collect sales tax on its charges.

Petitioner is a "reservation service" engaged in the business of providing listings of available bed and breakfast homes ("hosts") to travelers ("guests") wishing to stay at bed and breakfast homes. Petitioner also makes the reservation for the guest with the desired host.

Guests pay to Petitioner a deposit of 50% of the rental and remit the balance to the host upon arrival. Hosts are not required to book exclusively through Petitioner's agency. Petitioner represents some small inns as well as individual home owners. Petitioner charges guests a \$15 fee for its booking service or the guests may pay annual dues of \$25. Petitioner charges hosts 20% for its service.

Section 1105(e) of the Tax Law imposes a tax on "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 (1) a permanent resident, or (2) where the rent is not more than at the rate of two dollars per day."

Section 1101(c)(1) of the Tax Law defines the term "hotel" as follows:

A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term 'hotel' includes an apartment hotel, a motel, boarding house or club, whether or not meals are served.

Section 527.9(b)(1) of the Sales and Use Tax Regulations defines the term "hotel" as follows:

A building or portion of it, which 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.

Notwithstanding the fact that local ordinances may not consider Petitioner's hosts to be hotels, anyone who rents rooms in the manner of Petitioner's hosts would be considered the operator of a hotel for sales tax purposes and required to collect sales tax.

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Because Petitioner's hosts are not obligated to accept referrals from Petitioner, are free to accept guests from other sources and because Petitioner receives only a deposit from guests, Petitioner is acting in the same capacity as a booking or travel agent and thus not required to collect tax. However, since Petitioner is deemed to be receiving a commission, the total amount upon which Petitioner's hosts are required to collect tax must include Petitioner's commission or any other amount which Petitioner collects on behalf of its hosts.

DATED: August 31, 1987

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions  
are limited to the facts set forth therein.