



Elimination of One-Week Stay Test to Determine if the Rental of a Bungalow or Similar Living Unit is Subject to Sales Tax

This memorandum announces the Tax Department's new policy eliminating the one-week stay test to determine whether the rental of a bungalow or similar living unit is subject to the sales tax imposed on hotel occupancy.

Background

The New York State Tax Law imposes sales tax on the rent for every occupancy of a room or rooms in a hotel, motel, or similar establishment. The rental of real property for the purpose of residency is not subject to sales tax. The Tax Department's sales tax regulations relating to *bungalows and similar living units* provide a test for distinguishing between selling hotel occupancy and renting real property (TSB-M-92[7]S). The longstanding rule in section 527.9(e)(5) of the regulations provides that rentals of bungalows and similar living units (i.e., furnished living units limited to single-family occupancy) are not subject to the sales tax imposed on rent received for hotel occupancy if the term of the rental is for at least one week and no maid, food, or other common hotel services, such as entertainment or planned activities, are provided by the lessor.

On June 2, 2011, in *Matter of Old Forge Campgrounds, LLC* (DTA No. 823254), a Division of Tax Appeals Administrative Law Judge concluded that the one-week stay component of the test for nontaxable bungalow occupancy is not supportable and is therefore invalid. Although Administrative Law Judge determinations have no precedential value, after reviewing this matter, the department has decided to accept this conclusion. Therefore, the at least one-week stay test for determining whether occupancy of a bungalow or similar living unit is subject to sales tax will not be applied by the department.

New policy

Under the department's new policy, rent received for occupancy of a bungalow or similar living unit is not subject to the sales tax on hotel occupancy, regardless of the length of stay, as long as no housekeeping services, food services, or other common hotel services (including entertainment or planned activities) are provided by the lessor. Rent received for occupancy of a bungalow or similar living unit continues to be subject to tax if the lessor provides any of these services, entertainment, or planned activities. Section 527.9(e)(5) of the Sales and Use Taxes Regulations will be amended to reflect this new policy.

This policy is effective immediately and also applies to all tax periods that are open under the statute of limitations. It applies only to the New York State and local sales taxes administered by the Tax Department. The information in this memorandum does not apply to

any locally imposed and administered tax on hotel occupancy by New York City or other local taxing jurisdiction. Questions regarding locally imposed occupancy taxes such as the New York City Hotel Room Occupancy Tax and other locally imposed *bed taxes* should be directed to those local jurisdictions.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.