

Instructions for Form NYC-HTXB

NEW YORK CITY DEPARTMENT OF FINANCE



Hotel Tax Return For Use by Small Operators Only

IMPORTANT INFORMATION CONCERNING FORM NYC-200V AND PAYMENT OF TAX DUE

Payments may be made on the NYC Department of Finance website at nyc.gov/eservices, or via check or money order. If paying with check or money order, do not include these payments with your New York City return. Checks and money orders must be accompanied by payment voucher form NYC-200V and sent to the address on the voucher. Form NYC-200V must be postmarked by the return due date to avoid late payment penalties and interest. See form NYC-200V for more information.

GENERAL INFORMATION

IMPOSITION OF TAX

The New York City Hotel Room Occupancy Tax is separate from and in addition to sales taxes imposed by the State of New York and the City of New York on the occupancy of hotel rooms and consists of a percentage of the rent paid plus a flat amount per day. This tax must be collected for every occupancy of each room in a taxable facility in the City of New York except as provided below.

For purposes of the tax, operating a hotel may include renting rooms in a private residence, or rental of furnished apartments or other furnished living units intended for single-family use. In particular, **making more than one room in a house or apartment ordinarily occupied by a person as his or her residence available to paying guests may be operating a hotel. Short-term rental of one's entire residence may also be subject to tax.** Renting out a single room in one's home while continuing to live in that residence is not operating a hotel and would not be subject to tax.

Operators of hotels having fewer than ten (10) rooms and operators of fewer than ten (10) furnished apartments or furnished living units, **including anyone who regularly makes more than one room in his or her residence available to paying guests**, may use this form and file returns on an annual basis.

MINIMAL USE NOT SUBJECT TO TAX

Rooms, apartments or units rented to occupants on fewer than **three occasions** per year will not be subject to tax.

Rooms, apartments or units rented to occupants for not more than **14 days total** during a year will not be subject to tax.

For purposes of determining if these limits are exceeded, rentals of single rooms in a building or apartment by one operator will be added together, and rentals of apartments or living units by an operator will be added together. For example, if the owner of a three bedroom apartment rents one bedroom twice and another bedroom twice, she has rented to guests on four occasions and each rental is subject to tax if the total number of days is more than fourteen. If that person owns another apartment and rents it for a total of 12 days, she has rented to guests on at least 5 occasions for at least 16 days, and all the rentals are subject to tax.

HIGHLIGHTS OF RECENT LAW CHANGE

Occupancies sold by a hotel operator to a room remarketer on or after June 1, 2016 for the purpose of selling to an occupant will be exempt from Hotel Room Occupancy Tax. The room remarketer will still be responsible for collecting and remitting the Hotel Room Occupancy Tax on the sale to the occupant. Any room remarketer claiming this exemption must provide the hotel operator with a New York State Room Remarketer's Exempt Purchase Certificate. For further information, see Finance Memorandum 16-5.

Effective for all occupancies occurring on or after December 20, 2013 and before December 1, 2019, the additional tax (Forms NYC HTX and NYC HTXB, schedule A, line 5) is 5.875% of the rent or charge per day. The fixed rate tax of 50 cents up to \$2.00 per room per day (Forms NYC HTX and NYC HTXB, Schedule A, lines 1 through 4) remains unchanged. See Local Law 112 of the Local Laws of 2015.

Effective for all occupancies occurring on or after December 1, 2013 and before December 20, 2013, the additional tax is 5% of the rent or charge per day. Form NYC HTX and NYC HTXB, schedule A, line 5 will reflect a 5.875% rate and the .875% difference in the rate for these occupancies will be a credit subtracted on schedule A, line 9.

Effective for all occupancies occurring on or after March 1, 2009 and before December 1, 2013, the additional tax (Forms NYC HTX and NYC HTXB, schedule A, line 5) is 5.875% of the rent or charge per day. The fixed rate tax of 50 cents up to \$2.00 per room per day (Forms NYC HTX and NYC HTXB, Schedule A, lines 1 through 4) remains unchanged. See Local Law 067 of the Local Laws of 2011.

Effective for periods beginning on or after September 1, 2009, "room remarketers" are required to collect and remit the Hotel Room Occupancy Tax. Room remarketers are also required to register with the Commissioner of Finance.

Effective for periods beginning on or after September 1, 2010, room remarketers are required to collect the Hotel Occupancy Tax on the full amount charged to the occupant and remit the tax collected directly to the Commissioner of Finance. Room remarketers will be allowed a refund or credit for tax they paid to a hotel operator for occupancies that do not qualify as exempt, or for any tax paid to

another remarketer for that occupancy. Only remarketers that have registered with the Commissioner of Finance to collect the Hotel Occupancy Tax and have collected and remitted Hotel Occupancy Tax for a particular quarterly filing period may apply for this refund credit. For further information, see Finance Memorandum 10-3 Rev.

The law also specifies that when occupancy of a hotel room or rooms is sold for a single fee with other items or services, the entire amount is considered taxable rent. This new requirement results in a change in the position reflected in the Hotel Occupancy Tax Rules under which tax need only be collected on a specified portion of total charges when those charges include meals. Charges for meals must now be separately stated in order for those charges not to be subject to Hotel Occupancy Tax.

Room remarketers should not use this form. For periods beginning on September 1, 2009 through periods ending on August 31, 2010, room remarketers should use the NYC-HTX-RR. For subsequent periods, room remarketers must use the NYC-HTX.

HIGHLIGHTS OF RECENT RULE CHANGES

The Department of Finance recently adopted a number of new rules affecting the application of the New York City Hotel Room Occupancy Tax.

REPEAL OF "BUNGALOW" EXCEPTION:

Effective December 1, 2003, rentals to occupants, other than permanent residents, of furnished apartments or other furnished living units intended for single family use are subject to the tax regardless of whether the rental is for periods of one week or more and regardless of whether meals, maid service or other common hotel services are provided. For further information, see Title 19 Rules of the City of New York §12-01, definition of "hotel" effective November 29, 2003.

DE MINIMIS ACTIVITY RULE:

Effective September 1, 2004, a facility will not be considered a hotel (see definition below) required to collect the tax if, during any four consecutive tax quarters or any twelve-month period ending on the last day of February, rooms, apartments or units are rented to occupants on fewer than three occasions or for not more than 14 days in the aggregate. Rentals of rooms in a single building will be aggregated and rentals of apartments and

living units in one or more buildings owned or leased by the same operator will be aggregated. Rentals under a single contract for one or more consecutive days will be considered a single occasion, however, if a single contract provides for a rental for non-consecutive days, each period of consecutive days will be considered a single occasion. If a room, apartment or unit is sublet or the right to occupy the room, apartment or unit is sold or subcontracted to another person, each separate sublet or subcontract for a period of consecutive days will be considered a separate occasion. Rentals to permanent residents (see definition below) will not be included in the number of occasions or days of rentals for this purpose. Once a facility is required to register and collect the tax because it exceeds the de minimis thresholds during a period, it must continue to collect the tax even if it falls below the threshold in a later period. However, if a facility, once registered, falls below the threshold for a period of three consecutive years, the facility is not considered a hotel and is not required to file. For further information, see Title 19 Rules of the City of New York §12-01, definition of "hotel", effective February 19, 2005.

CHANGE IN FILING REQUIREMENTS FOR SMALL OPERATORS:

Effective for periods beginning on and after September 1, 2004, operators of hotels having fewer than ten (10) rooms and operators of fewer than ten (10) furnished apartments or furnished living units may file their returns on this form on an annual basis covering the twelve-month period ending on the last day of February. That return will be due on the subsequent March 20 each year. If you have ten (10) or more rooms or ten (10) or more apartments, you may not use this form. Use Form NYC-HTX. For further information, see Title 19 Rules of the City of New York §§12-06 and 12-07, effective February 19, 2005.

PERMANENT RESIDENT: The definition of a permanent resident (see below) has been clarified to provide that, in determining the number of days of consecutive occupancy, any day on which a person occupying the room sublets or otherwise contracts away that person's right to occupy the room will not be taken into account. For further information, see Title 19 Rules of the City of New York §12-01 effective July 25, 2001.

NOTE: Effective for periods beginning on and after April 1, 2005, New York State has enacted a Convention Center Hotel Unit Fee of \$1.50 per hotel unit per day. The fee is required to be collected by hotels within the City. **This fee is not part of the New York City Hotel Room Occupancy Tax.** The new fee is to be collected and administered by the New York State Department of Taxation & Finance in the same manner as the Sales Tax on hotel rooms. Additional information is available on their website at www.nystax.gov

DEFINITIONS

- Hotel

For purposes of the tax, "hotel" is any building or portion thereof that is regularly used and kept open for the lodging of occupants. The term "hotel" includes apartment hotels, motels, boarding houses, lodging houses and clubs, whether or not meals are served. The rental to occupants, other than permanent residents, of furnished apartments or other furnished living units intended for single-family use is considered a hotel. A hotel includes making one or more rooms in a property owned by an individual available to guests for compensation on a regular basis and also includes renting to guests more than one room in a dwelling place ordinarily occupied by a person as his or her residence. See "Highlights of Recent Rule Changes" above.

- Operator

An "operator" is any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals operating a hotel in the City of New York, including but not limited to the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee, or any other person operating the hotel.

- Room Remarketer

A person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by such room remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such person's ability or authority to reserve, arrange for, convey, or furnish occupancy directly or indirectly, and to determine rent therefore, are the "rights of a room remarketer". A room remarketer is not a permanent resident with respect to a room for which such person has the rights of a room remarketer.

- Occupancy

"Occupancy" is the use or possession of any room or rooms in a hotel, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms. There is an "occupancy" of a room whether or not the person entitled to the use or possession of the room actually uses or possesses it. Right to use or possession includes the rights of a room remarketer.

- 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 or other charge or amount required to be paid as a condition for occupancy, and also any amount for which credit is allowed by the operator or room remarketer to the occupant, without any deduction therefrom whatsoever, whether received by the operator or a room remarketer or another person on behalf of either of them.

- Permanent Resident

Except as otherwise provided below, a person is a "permanent resident" as of a given date if he/she has had the right to occupy a room or rooms in a particular hotel for the 180 consecutive days preceding that date. See "Highlights of Recent Rule Changes - Permanent Resident" above for recent changes related to the definition of a permanent resident. A person who enters into an agreement for occupancy for 180 consecutive days or more does not become a "permanent resident" under the law until he/she has been an occupant for 180 consecutive days, and the operator is liable for the collection of the tax until that occupancy for 180 consecutive days has been completed. However, an occupant can obtain permanent resident status prior to completing 180 days of consecutive occupancy by requesting a lease from the hotel operator pursuant to the provisions of Section 2522.5 of the rent stabilization regulations promulgated by the New York State Division of Housing and Community Renewal. Where the occupant has requested such a lease, the hotel operator should not collect the tax for any day, starting on the date the lease was requested, that falls within a period of continuous occupancy by the occupant. However, if the occupant does not complete 180 days of continuous occupancy, any taxes not previously collected become immediately due and payable and are to be collected by the hotel operator." A room remarketer is not a permanent resident with respect to a room for which such person has the rights of a room remarketer.

- Transient Occupant

A "transient occupant" is a person entitled to use or possess a hotel room who is not a "permanent resident" as defined above.

- Room

A "room" includes any portion of a hotel, other than a bathroom or lavatory, whether used for dwelling, commercial or any other purposes, except: (1) A place of assembly as defined in the NYC Administrative Code (See Title 19 Rules of the City of New York Section 12-01); (2) A store, stand or counter to which access is had directly from public thoroughfares or street or mezzanine lobbies; (3) A lobby, public dining room or other public room used for a private purpose. The term "room" also includes a kitchenette, provided that (a) it is a walk-in area, enclosed by walls, with one or more doorways, archways, or other openings, (b) it is supplied with a cooking appliance, including, but not limited to, a range, microwave or convection oven, or hot plate, and (c) it contains at least one item from each of two of the following three categories: (1) a sink with running water, or dishwasher; (2) a refrigerator; (3) a cabinet, counter top, or table.

REGISTRATION

Every operator of a hotel and every remarketer must file with the Department of Finance a certificate of registration on the form prescribed by the Department of Finance for the purpose of

obtaining a certificate of authority empowering the operator to collect the tax. In the case of operators or remarketers commencing business or opening new hotels, a certificate of registration must be filed within three days after the commencement or opening. Every operator who operates more than one hotel is required to obtain a certificate of authority for each establishment. An operator of furnished apartments or other furnished living units intended for single-family use subject to the tax and located at multiple addresses may request a single certificate of authority for all such apartments or living units by attaching to the registration form a schedule showing each apartment and its street address. The certificate of authority must be prominently displayed by the operator in a manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. In the case of a room remarketer that offers New York City hotel rooms via the internet, the Certificate of Authority should be scanned and displayed on the room remarketer's web site.

Exemption of Nonprofit Operators. An organization organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, is exempt from the obligation to register and collect the tax as a hotel operator if it carries on its nonprofit activities in premises in which, as part of the activities for which it was organized, it operates a hotel. To obtain the above exemption as a hotel operator, a nonprofit organization must submit a request for exemption containing the following:

1. a copy of the organization's articles of incorporation or association,
2. a copy of its by-laws,
3. a statement of receipts and disbursements for its most recent year,
4. a statement of its assets and liabilities for its most recent year,
5. a copy of its exemption from federal income tax issued by the Internal Revenue Service,
6. copies of its federal, state, and City tax returns for the most recent three years, and
7. an affidavit of an officer of the organization stating the following:
 - a. type of organization
 - b. purpose for which it was organized
 - c. a description of its actual activities
 - d. source and disposition of its funds
 - e. a statement that none of its net earnings is credited to surplus nor may inure to the benefit of any shareholder, member or individual, and
 - f. such other facts as may be relevant to its application.

The application should be submitted to:

**New York City Dept. of Finance
Exemption Processing Section
59 Maiden Lane, 20th Floor
New York, NY 10038**

WHEN AND WHERE TO FILE

Every operator as defined above is required to file returns. Effective for periods beginning on and after September 1, 2004, operators of hotels having fewer than ten (10) rooms and operators of fewer than ten (10) furnished apartments or furnished living units may file their returns on an annual basis covering the twelve-month period ending on the last day of February. That return will be due on the subsequent March 20 each year. An operator of furnished apartments or other furnished living units intended for single-family use subject to the tax and located at multiple addresses but registered under a single certificate should file a single return covering all such apartments or living units by attaching to the return a schedule showing each apartment and its street address.

All returns, except refund returns:

**NYC Department of Finance
Hotel Tax
P.O. Box 5564
Binghamton, NY 13902-5564**

Remittances - Pay online with Form NYC-200V at nyc.gov/eservices, or Mail payment and Form NYC-200V only to:

**NYC Department of Finance
Hotel Tax
P.O. Box 3933
New York, NY 10008-3933**

Returns claiming refunds:

**NYC Department of Finance
Hotel Tax
P.O. Box 5563
Binghamton, NY 13902-5563**

An operator who terminates the business or falls below the de minimis threshold for three consecutive years (see, "Highlights of Recent Rule Changes") must file a final return within 20 days from the date the business was terminated. If the business was sold, the purchaser must also file a return covering the period beginning on the date of purchase.

Quarterly returns must be filed for each establishment not eligible for annual filing for each three-month period ending on the last days of August, November, February and May of each tax year and must be filed within 20 days of the end of the period they cover. **If you have ten (10) or more rooms or ten (10) or more apartments, you may not use this form. Use Form NYC-HTX.**

ELECTRONIC FILING

Register for electronic filing. It is an easy, secure and convenient way to file and pay the Hotel Tax on-line. For more information log on to NYC.gov/eservices

COMPUTATION OF TAX

- 1) This tax must be paid for every occupancy of each room in a hotel in the City of New York at 5.875% of the rent charged plus an amount per room per day based on the following table:

If the rent per full day for the room is:	The tax per day is:
\$10 or more, but less than \$20.....	\$ 0.50
\$20 or more, but less than \$30.....	\$ 1.00
\$30 or more, but less than \$40.....	\$ 1.50
\$40 or more.....	\$ 2.00

In using the table, where an amount of rent is charged for more than one room, whether or not a suite, if such rooms are not otherwise rented separately, the daily rent per room is to be determined by dividing the entire rent by the number of rooms for which the charge is made (see "room" defined above). For example, if the entire charge for a suite of three rooms is \$90 per day, the charge for each room is considered to be \$30. Beginning on or after December 1, 1994 and before March 1, 2009, the per room tax is \$1.50 plus an additional 5% of the rent. Beginning on or after March 1, 2009 and before December 1, 2019, except for occupancies beginning on or after December 1, 2013 and before December 20, 2013, the per room tax remains at \$1.50 but the additional tax rate has been raised to 5.875% of the rent. (See instructions for Line 5).

- 2) Where a room occupancy is for less than a full day and a person pays less than the rent for a full day, the tax is the same amount as would be due for a full day at the rate for a full day.
- 3) Where the rent covers a term longer than one day, the rent per day is computed by dividing the rent for the term by the total number of days in the term.

EXEMPTIONS

The following persons are exempt from payment of the tax as hotel occupants: (a) permanent resident as defined above, and (b) organizations and associations exempt from the State and City Sales Tax on hotel room rents as described in Tax Law section 1116(a), including the federal government, the State and City of New York, or any agency thereof, and certain nonprofit organizations. A person or entity claiming exemption other than as a permanent resident must submit to the hotel operator a New York State Sales Tax exemption certificate to obtain this exemption.

Occupancies sold by a hotel operator to a room remarketer on or after June 1, 2016 for the purpose of selling to an occupant will be exempt from Hotel Room Occupancy Tax. Any room remarketer claiming this exemption must provide the hotel operator with a New York State Room Remarketer's Exempt Purchase Certificate.

Preparer Authorization: If you want to allow the Department of Finance to discuss your return with the paid preparer who signed it, you must check the

"yes" box in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Preparer's Use Only" section of your return. It does not apply to the firm, if any, shown in that section. By checking the "Yes" box, you are authorizing the Department of Finance to call the preparer to answer any questions that may arise during the processing of your return. Also, you are authorizing the preparer to:

- Give the Department any information missing from your return,
- Call the Department for information about the processing of your return or the status of your refund or payment(s), and
- Respond to certain notices that you have shared with the preparer about math errors, offsets, and return preparation. The notices will not be sent to the preparer.

You are not authorizing the preparer to receive any refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the Department. The authorization cannot be revoked, however, the authorization will automatically expire twelve (12) months after the due date (without regard to any extensions) for filing this return. Failure to check the box will be deemed a denial of authority.

SPECIFIC INSTRUCTIONS

Special Condition Codes

At the time this form is being published, there are no special condition codes for tax year 2015. Check the Finance website for updated special condition codes. If applicable, enter the two character code in the box provided on the form.

LINE b AND c -

For operators of furnished apartments or other furnished living units located at different street addresses, enter on this line and line c the number of rooms in all locations.

LINE d -

If you are an operator renting out apartments or living units under a single certificate of authority in more than one building attach an addendum to this form showing the name, if any, and the address of each building in which you rent out apartments or living units under a single certificate of authority on a transient basis and the number of rooms at each location.

LINE e -

The taxpayer must enter the facility address if it is different from the address entered in the box at the top of page one of the form.

SCHEDULE A - COMPUTATION OF TAX

LINE A - PAYMENT

Enter the amount of payment remitted with this return.

LINE 1 TO 4 - RENT CATEGORIES

Enter in the proper lines for each rental category the total number of taxable occupancies of rooms or apartments during the period covered by the return.

LINE 5 - ADDITIONAL TAX DUE

Enter the total amount of rents or charges for taxable occupancies during this tax period. Multiply this by the tax rate, which for periods on or after Dec. 1, 1994 and before March 1, 2009 is 5%. Effective for all occupancies occurring on or after March 1, 2009 and before December 1, 2015, including occupancies occurring on or after December 1, 2013 and before December 20, 2013, use the 5.875% tax rate. The difference in tax for occupancies occurring on or after December 1, 2013 and before December 20, 2013 that results from the 5% tax rate will be subtracted as a credit on Line 9.

LINE 7 - TOTAL TAX COLLECTED

Enter the amount of tax collected or required to be collected according to your books and records.

LINE 9 - REFUNDS AND/OR CREDITS

Enter the sum of the following and attach a schedule to the return and explain on a rider:

- any amount of tax paid to the Department of Finance in the preceding period and refunded in the current period to a person who has become a permanent resident;
- any amount of tax paid to the Department of Finance with respect to rent that has been determined to be worthless, but only if the refund is requested within one year from the date of payment;
- if the total rents on schedule A, line 5 includes rent for occupancies that occurred on or after December 1, 2013 and before December 20, 2013, a credit consisting of .875% of the total rents due for occupancies beginning on or after December 1, 2013 and before December 20, 2013; and
- any other credit allowable by law or regulation, provided a detailed explanation is attached to the return.

LINE 16 - INTEREST

If the tax is not paid on or before the due date, interest must be paid on the amount of the underpayment from the due date to the date paid. For information regarding interest rates, visit the Finance website at nyc.gov/finance or call 311. If calling from outside of the five NYC boroughs, please call 212-NEW-YORK (212-639-9675). Interest amounting to less than \$1 need not be paid.

LINE 17 - PENALTY

- If you fail to file a return when due, add to the tax (less any payments made on or before the due date) 5% for each month or partial month the form is late, up to 25%, unless the failure is due to reasonable cause.

- If the return is filed more than 60 days late, the above late filing penalty will not be less than the lesser of 1) \$100 or 2) 100% of the amount required to be shown on the return less any payment or credits claimed.

- If you fail to pay the tax shown on the return by the prescribed filing date, add to the tax (less any payments made) 1/2% for each month or partial month the payment is late up to 25%, unless the failure is due to reasonable cause.

- The total of the additional charges in (a) and (c) may not exceed 5% for any one month except as provided in (b). If you claim not to be liable for these additional charges, a statement in support of your claim should be attached to the return.

Additional penalties may be imposed on any underpayment of the tax due to negligence or fraud. Officers of a corporate operator and partners in a partnership that is an operator are personally liable for the tax collected or required to be collected by the corporation or partnership and are subject to the above penalties.

LINE 18 - TOTAL REMITTANCE DUE

Add lines 13, 16 and 17 to obtain the total amount due. Make your check payable to the order of:

NYC Department of Finance

To receive proper credit, you must enter your correct Employer Identification Number or Social Security Number and your Account ID number on your tax return and remittance.

DID YOUR MAILING ADDRESS CHANGE?

If so, please visit us at nyc.gov/finance and click "Update Name and Address" in the blue "Business Taxes" box. This will bring you to the "Business Taxes Change of Name, Address or Account Information". Update as required.

ASSISTANCE

For further information, call 311. If calling from outside the five NYC boroughs, call 212-NEW-YORK (212-639-9675).

PRIVACY ACT NOTIFICATION

The Federal Privacy Act of 1974, as amended, requires agencies requesting Social Security Numbers to inform individuals from whom they seek this information as to whether compliance with the request is voluntary or mandatory, why the request is being made and how the information will be used. The disclosure of Social Security Numbers for taxpayers is mandatory and is required by section 11-102.1 of the Administrative Code of the City of New York. Such numbers disclosed on any report or return are requested for tax administration purposes and will be used to facilitate the processing of tax returns and to establish and maintain a uniform system for identifying taxpayers who are or may be subject to taxes administered and collected by the Department of Finance, and, as may be required by law, or when the taxpayer gives written authorization to the Department of Finance for another department, person, agency or entity to have access (limited or otherwise) to the information contained in his or her return.