

## **Issue Brief – New York City Remarketer Tax**

New York City passed Int. 1012, which became Local Law 43 of 2009. This law amends the New York City Occupancy tax to include a 5.875 tax (known as a remarketer tax) on those entities involved in the resale of New York City hotel rooms. The new tax is a “markup tax” in that it is applied to the difference between the price paid for the hotel room and the price at which it is sold. In a very basic example, if a travel marketer purchased a hotel room for \$150 and re-sold it for \$200, the new tax would apply to the \$50 “markup” of the room.

The new law went into effect on September 1. The registration form was posted to the New York City Department of Finance’s site on September 1. Tour operators running tours to New York City were given three days to register with the City’s Department of Finance.

To read information provided by the New York City Department of Revenue, click these links:

Sept. 1 Audit Memorandum - [http://www.nyc.gov/html/dof/html/pdf/sap/htx\\_2009-01.pdf](http://www.nyc.gov/html/dof/html/pdf/sap/htx_2009-01.pdf)  
Aug.14 Department of Finance Memorandum  
[http://www.nyc.gov/html/dof/html/pdf/09pdf/hotel\\_room\\_occupancy081409.pdf](http://www.nyc.gov/html/dof/html/pdf/09pdf/hotel_room_occupancy081409.pdf)

New York City Certificate of Registration -  
[http://www.nyc.gov/html/dof/html/pdf/payment\\_operations/htx\\_certificate\\_of\\_registration.pdf](http://www.nyc.gov/html/dof/html/pdf/payment_operations/htx_certificate_of_registration.pdf)

### **Key Points of the New Law**

- When a remarketer has put together or purchased a package for resale and the remarketer knows the price of the components, a “cost of components” method should be used to determine what part of the package represents taxable additional rent. The taxable additional rent would be based on the ratio of the wholesale cost of the hotel room to the wholesale cost of all the components of the package multiplied by the total mark-up for the package. However, many remarketers buy packages from other remarketers, who may have bought them from others, and so on. They frequently have no idea of the cost of some or all of the components.

In that instance, a 15% markup on 70% of the average retail rate of a similar room may be used to compute additional rent.” The “average retail rate of a similar room” refers to rooms at the same hotel in the same week that the room will be occupied as part of the package. For instance, a tour operator selling a package for June 3-10, 2010 will use the rate the hotel is charging for the room that week to calculate the tax.

- Effective date: The tax on net rent and additional rent will apply to hotel rooms in New York City booked on or after September 1, 2009, which is the effective date of the local law enacting these
- If a remarketer purchases rooms from a hotel and sells them to a second remarketer that then sells to the occupant, each remarketer is responsible for

collecting hotel tax on its own markup, and the hotel is responsible for the hotel tax on the discounted rate it charges the (first) remarketer.

- Travel sellers that sell hotel rooms in New York City that are paid for by the customer directly will not be subject to the tax.
- If a seller of travel does not mark up hotel rooms and is solely compensated by a sales commission, then the seller does not have to collect the tax.
- Concierge fee vs. Markup – If a seller of travel can prove that the tour operators' fee is for individual service (researching hotel options for the client, for example) then the fee is not taxable. Service fees are not taxable. The burden is on the tour operator to keep sound records so that markups and fees can be demonstrated.
- The New York City Department of Revenue will audit hotels to see what sellers of travel have to remit markup taxes.

NTA has appealed to New York City Mayor Bloomberg to repeal this tax for the following reasons:

- The new law is extremely confusing to tour operators and the travel industry
- There is great uncertainty over how the new law will be applied and enforced. Guidance issued by the City of New York has at best been contradictory and at the worst woefully incomplete.
- The law will cause much paperwork and financial burdens for tour operators and the hotels they utilize. Many tour operators will simply choose to stay outside of New York City, causing significant harm to the city's tourism industry.

If you are an NTA member based in New York City, visit the Legislative Action Center (<http://www.ntaonline.com/TakeAction>) and send New York City Mayor Bloomberg a letter urging the repeal of the Remarketer Tax.

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