

**A GUIDE
TO
SALES TAX
FOR
HOTEL
AND
MOTEL
OPERATORS**

About this publication

Publication 848 is a guide to New York State and local sales and use taxes administered by the Tax Department as they apply to you in your operation of a hotel, motel or similar establishment. It is intended to provide you, the owner, operator, or manager (collectively to be referred to in this publication as *operator* or *operator of a hotel*) with information related to sales tax that is specific to the hotel and motel industry, and to help you understand your sales tax responsibilities. Any reference to *sales tax* in this publication includes, where appropriate, both the state and local sales and use taxes administered by the Tax Department. Under the Tax Law, *a person required to collect tax* includes every operator of a hotel and every vendor of taxable tangible personal property or services. Therefore, it is important that you know the taxable status of the rental of rooms, and sales of related tangible personal property and services.

This publication provides you with detailed information on the imposition of sales tax on hotel occupancy, the sales tax treatment of the varied transactions that you may be involved in, the permanent resident exclusion, and information on your responsibility when a customer claims an exemption from sales tax. It also includes information on capital improvements to, and the repair and maintenance of hotel/motel premises.

This publication does not address any of the locally-imposed taxes on hotel occupancy administered by counties and cities (bed taxes), except where these taxes are referenced to illustrate how to properly compute sales tax. For information about local occupancy taxes, please contact the taxing jurisdiction in which the hotel is located.

For additional and more general information on sales tax, please see Publication 750, *A Guide to Sales Tax in New York State*. You can obtain Publication 750 and other Tax Department publications, memoranda (TSB-Ms) and documents by visiting the Department's Web site at www.tax.ny.gov or by calling 518-457-5431.

If you have any questions regarding any aspect of the sales tax or other taxes administered by the Tax Department, please contact us. See *Need help?* on the back cover of this publication.

NOTE: A publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes to the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information presented in this publication. Publications are updated regularly and are accurate on the date issued.

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Imposition of sales tax on rent for hotel occupancy

Sales tax is imposed on the rent for occupancy of a room or rooms in a hotel

Sales tax is imposed on the rent for every occupancy of a room or rooms in a *hotel* in New York State. (See page 10 for the definition of *hotel occupancy*). However, the sales tax on the rent for hotel occupancy is not imposed (1) on a permanent resident of the hotel; (2) where the rent is not more than \$2 per day; or (3) on rent for any occupancy that is excluded or exempted from tax under the Tax Law or under any other provision of law. (See page 14 for detailed information on the permanent resident exclusion and see page 18 for information on exempt occupants). Also, the sales tax on the rent for hotel occupancy is not imposed on the rent of a room that meets the definition of *place of assembly* and that is used for one or more of the purposes described in the definition. (See page 10 for the definition of *place of assembly* and page 27 for information on the rental of meeting rooms in combination with the serving of food or drink or catering services.)

Hotel unit fee imposed in New York City

In addition to the sales tax on hotel occupancy and any local occupancy taxes, a hotel unit fee in the amount of \$1.50 per unit per day (hereinafter the NYC \$1.50 fee) is imposed on every occupancy of a unit in a hotel located within New York City (Bronx, Kings, New York, Queens and Richmond Counties). Like the sales tax on rent for hotel occupancy, this hotel unit fee is not imposed (1) on a *permanent resident* of the hotel; (2) where the rent per unit is not more than \$2 per day; or (3) on rent for any occupancy that is excluded or exempted from sales tax under the Tax Law or under any other provision of law. The NYC \$1.50 fee is administered and collected in the same manner as the sales tax on the rent received for hotel occupancy. For additional information on this hotel unit fee, including the definition of unit in a hotel, please see TSB-M-05(2)S, *Fee on Hotel Occupancy in New York City*.

Operators of hotels are required to collect and pay over the sales tax

As an operator of a hotel, you are a person required to collect tax and pay over any tax due to the Tax Department.

Local occupancy taxes

In addition to the sales tax on rent for occupancy and the hotel unit fee imposed in New York City, certain jurisdictions also impose and administer local occupancy taxes on hotel occupancy, commonly known as a bed tax. Any questions regarding a local occupancy tax should be directed to the taxing jurisdiction in which the hotel is located.

Definitions

Hotel

A *hotel* is a building or a portion of a building which is regularly used and kept open for the lodging of guests. A building comes within the definition of a hotel if, among other factors:

- sleeping accommodations are provided for the lodging of paying occupants on a regular basis;
- the typical occupant is a transient or public traveler;
- the relationship between the operator of the establishment and the occupant of the accommodations is that of an innkeeper and guest and not of a landlord and tenant;
- 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 a particular room or rooms; and
- the operator provides maid and linen service or other customary hotel services for its occupants.

The term *hotel* includes the following:

- apartment hotels;
- motels;
- hostels;
- tourist cabins;
- bungalows (however, see page 25 for information regarding the nontaxable rental of bungalows);
- cottage colonies;
- inns;
- boarding houses or clubs;
- lodging houses;
- rooming houses;
- bed and breakfasts;
- guest houses;
- dude ranches;
- ski lodges; and
- similar establishments that are regularly used and kept open for the lodging of occupants.

Note: If a person rents a room in his or her residence to a transient occupant on a less-than-regular basis, the room being rented out is not considered a room in a hotel, and, therefore, the person is not required to collect sales tax on the rental.

Operator of a hotel

Operator of a hotel is any person operating a hotel.

Travel agents or travel agent companies, or persons or companies that provide information and resources that are intended to replace the services provided by traditional travel agents, such as travel services, airline and cruise tickets, hotel room reservations, car rental reservations and vacation packages, generally do not fall within the definition of *operator of a hotel*. This is typically because such persons or entities do not maintain any buildings or portions thereof for the lodging of guests.

Example: *Company XYZ is an Internet-based, travel-related services company that provides its customers with access to various travel services, including airline and cruise tickets, hotel reservations, car rental reservations, and vacation packages. With respect to hotel occupancy, XYZ Company provides its customers with the ability to use its Web site to reserve hotel rooms. In this capacity, XYZ acts as an intermediary between hotel operators and the hotel's customers for the booking of and payment for hotel accommodations.*

In order to provide this service, XYZ enters into contracts with various hotel operators whereby the hotels provide XYZ with information regarding available rooms. When a customer chooses to book a room through XYZ, XYZ enters into a contract with the hotel to rent the room at a particular per night rate. XYZ then reserves the room for the customer and the customer pays XYZ for the hotel accommodations. At the end of the customer's stay at the hotel, the hotel invoices XYZ for the rent for room occupancy, including sales tax. To illustrate, Customer W books a room in a hotel through XYZ for a three night stay. XYZ enters into an agreement with the hotel to pay \$80 per night for the room. Customer W agrees to pay XYZ \$95 per night for the hotel accommodations.

Since XYZ does not maintain any buildings or portions of buildings for the lodging of guests, it is not an operator of a hotel and is not required to collect sales tax based on the activities described in this example. In this example, the hotel operator is required to collect sales tax from XYZ on the \$240 (\$80 x 3 nights) rent received for hotel occupancy from XYZ.

Note: If an agency or other relationship existed between XYZ and the hotel operators, or XYZ and the hotels were related such that XYZ's fee subsidized the hotels' rent from room occupancy, or XYZ maintained an inventory of hotel rooms for rent for its own account, the sales tax treatment described in this example

may be different. See, McDermott Will & Emery, TSB-A-04(6)S.

Hotel occupancy

Hotel occupancy is the use or possession, or the right to the use or possession, of any room or rooms in a hotel. As explained below, *room or rooms in a hotel* does not include a *place of assembly*.

Hotel occupant

A *hotel occupant* is a person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel under any lease, concession, permit, right to access, license to use, or other agreement.

Room or rooms in a hotel

Room or rooms in a hotel means any room or rooms of any kind in any part or portion of a hotel that are available to be rented or are rented for any purpose other than as a *place of assembly*. (See the definition of *place of assembly* below.) *Room or rooms in a hotel* include dormitory-type sleeping facilities at ski lodges, dude ranches and similar establishments.

Place of assembly

Place of assembly means a room or suite of rooms containing no sleeping accommodations and intended to be used for purposes other than sleeping and living accommodations such as, meetings, recreation, education, business or religious purposes.

Person

The term *person* includes an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

Rent for hotel occupancy

Rent for hotel occupancy is the consideration for occupancy of a room or rooms in a hotel, valued in money or otherwise. *Rent for hotel occupancy* includes charges for accommodations, services, facilities, amenities and items that are incidental to the occupancy of the room or rooms, whether those charges are separately stated or included as one sum in the daily rate for the room or rooms. Examples of incidental charges include charges for:

- maid service;
- concierge service;
- towel and linen service;
- local telephone service not billed on a per call basis;
- in room computer;
- in room modem lines; and
- providing additional beds, cots or other furnishings for occupants.

Example: Upon completion of a two-day stay at a hotel, an individual is presented with an itemized bill showing the following charges:

<i>Rental of room</i>	\$500.00
<i>Local telephone service</i>	17.28
<i>Maid service</i>	50.00
<i>Linen and towel service</i>	<u>25.00</u>
<i>Total</i>	\$592.28

Rent for hotel occupancy is the entire charge of \$592.28, which comprises the base amount of rent for the room plus the incidental charges for local telephone service, maid service, and linen and towel service.

Reasonable and separately stated charges that are not incidental to the occupancy of a room or rooms in a hotel are not considered to be rent. For example, reasonable and separately stated charges for food and drink, entertainment, valet and laundry service, theater ticket service, parking and transportation do not constitute rent, but may be taxable under other sections of the Tax Law. Please see page 28 for further information on this topic.

Computation of tax on rent for hotel occupancy

Determining the rate of sales tax on the rent for hotel occupancy

The amount of sales tax due on rent for hotel occupancy is computed by applying the combined state and local sales tax rate, including, where applicable, the 3/8 % sales tax imposed in the Metropolitan Commuter Transportation District (MCTD), to the amount of rent charged for the room or rooms. The MCTD comprises the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester, and the city of New York (Bronx, Kings, New York, Queens, and Richmond counties). The NYC \$1.50 fee imposed in New York City and discussed on page 7 is not included in the amount upon which sales tax is computed.

The amount of any local occupancy tax is not included in the computation of the sales tax due on the rent of hotel rooms

If the rent for the occupancy of a hotel room or rooms in a local jurisdiction is subject to the local occupancy tax, the amount of the local occupancy tax is not included in the computation of the sales tax.

Example: An individual rents a room at a bed and breakfast for two days. The bed and breakfast is located outside the MCTD and in a jurisdiction that imposes a 3% hotel occupancy tax. The rental rate per day is \$100. Assuming a combined rate of state and local sales tax of 8% in the jurisdiction, the total due for occupancy of the hotel room is computed as follows:

Rental charge (2 days @ \$100 per day)	\$200.00
Local occupancy tax (3% x \$200)	6.00
Sales tax (8% x \$200)	<u>16.00</u>
Total due	\$222.00

Change in tax rate

If there is a change in the sales tax rate, you must begin to collect tax on rent for hotel occupancy at the new rate on the date of occupancy which occurs on or after the effective date of the rate change. For updated state and local sales tax rates, see Publication 718, *New York State Sales and Use Tax Rates by Jurisdiction*.

Example: An individual rents a hotel room for seven days at the rate of \$60 per night in a taxing jurisdiction outside the MCTD. An increase in the local sales tax rate takes effect on the fourth day of the individual's occupancy. The combined tax rate was 7% prior to the increase in the local sales tax rate and is 8% after the increase. The tax due on the rental of the room is computed as follows:

Rental charge (3 days @ \$60 per day)	\$180.00
Sales tax (7% x \$180.00)	12.60
Rental charge (4 days @ \$60 per day)	240.00
Sales tax (8% x \$240)	<u>19.00</u>
Total due	\$451.60

Credit card charges

When an occupant uses a credit card to pay his or her bill, the credit card company may deduct administrative charges and pay the hotel an amount which represents less than 100% of the occupant's bill. The deduction of the administrative charges by the credit card company does not affect the amount subject to sales tax, or the amount of sales tax due and collectible on the bill.

Gift certificates

Gift certificates for a stated dollar amount, whether given away for no consideration or sold, are not subject to sales tax. The gift certificate is the equivalent of money or any other consideration that may be used to pay for an item in a transaction. When the gift certificate is used, sales tax is due on those charges that are normally subject to sales tax. The occupant may pay the sales tax either from the proceeds of the gift certificate, with cash or with some other consideration.

Coupons

Unlike a gift certificate, a coupon represents a reduction in price offered by either the hotel operator or a third party. If a hotel accepts a coupon that offers an occupant a discount and the hotel will not be reimbursed by a third party for any part of the discount the occupant receives, then the rate of sales tax is applied to the discounted charge to the occupant.

If the hotel is reimbursed for all or any part of the discount the occupant receives, the amount of the reimbursement is included in the amount of rent subject to sales tax.

Example: As a promotion for its grand opening, a hotel issues coupons entitling occupants to a 15% discount on the rental of a suite. The hotel will not receive any reimbursement for the discounts. An occupant rents a suite of rooms for one day. The rental charge for the suite is usually \$650. The occupant uses a coupon issued by the hotel, and pays a net rental charge of \$552.50. Sales tax is due on \$552.50.

Example: A hotel, which is one of several hotels within a chain of franchised hotels, participates in the chain's point redemption program. Under the program, occupants who stay at one of the hotels within the chain receive points which, when accumulated to a certain amount, may be exchanged for a coupon which is redeemable for an occupancy at no rental charge at any one of the chain's hotels. The hotel that redeems the coupon receives a payment from the corporate franchiser for each rent-free stay granted under the program, using a formula based on the hotel's standard charges for the room rentals. To illustrate, Mr. B receives a coupon which is redeemable for a free two-night stay at any hotel within the chain of a nationally franchised group of hotels. Mr. B redeems his coupon at one of the hotels that is part of the franchised group, located in Rochester, New York. Using the formula based on the standard charges for room rentals at the Rochester hotel, the corporate franchiser pays the operator of the Rochester hotel \$175.00 for Mr. B's two night stay at the hotel. The payment received by the operator of the Rochester hotel from the corporate franchiser based on the coupon redeemed by Mr. B is considered to be rent for hotel

occupancy and is subject to sales tax at the combined rate of State and local sales tax in effect in Rochester. The operator of the Rochester hotel must collect the sales tax due from Mr. B.

Example: *A hotel chain franchiser offers a 20% discount to corporate occupants who rent a room in one of the hotels operated by a franchisee. The incentive is advertised in the newspapers along with a coupon for the occupant to use in order to obtain the discount. As an inducement to its franchisees, the franchiser will reimburse them an amount equal to the discount given the occupant. A corporate occupant uses a coupon and rents a hotel room in one of the chain's franchises for one week. Instead of paying the normal rent of \$800 on the room, the occupant pays \$640. The hotel will be reimbursed \$160 by the franchiser. In this situation, the hotel is required to collect sales tax on the full rental price of \$800 since it will be receiving that amount for the rental of the room (\$640 from the occupant plus \$160 from the franchiser.)*

Permanent resident exclusion

For New York State sales tax and local sales taxes (other than in New York City), and the \$1.50 hotel unit fee, an occupant must have at least 90 days of consecutive occupancy to be a permanent resident; for the sales tax imposed on rent for hotel occupancy in New York City, the period is 180 consecutive days of occupancy

As stated on page 7, sales tax is not imposed on the rent for hotel occupancy paid by a permanent resident of a hotel. For purposes of state and local sales taxes (other than New York City's sales tax on rent for hotel occupancy), a *permanent resident* is an occupant of a room or rooms in a hotel for at least 90 consecutive days. This definition of *permanent resident* also applies to the NYC \$1.50 fee imposed on hotel occupancy in New York City described on page 7 of this publication.

For purposes of New York City's sales tax on rent for hotel occupancy, a *permanent resident* is an occupant of a room or rooms in a hotel for at least 180 consecutive days. The rules regarding consecutive days of occupancy for purposes of determining permanent resident status apply to business entities as well as natural persons.

Example: *An individual rents a suite of rooms at a hotel located in Manhattan. The individual will be considered a permanent resident of the hotel for purposes of the New York State sales tax and the NYC \$1.50 fee imposed on hotel occupancy in New York City after 90 consecutive days of occupancy. However, the individual will not be considered a permanent resident for purposes of the local sales tax imposed within New York City until he or she has occupied a room or suite of rooms at the hotel for at least 180 consecutive days.*

***Example:** A corporation rents a room in a hotel located in Niagara Falls, New York. The room will be used to occupy individual employees of the corporation at various times, while they are in the Niagara Falls area doing business for the corporation. The corporation will become a permanent resident of the hotel for New York State and local sales tax purposes after renting the room for 90 consecutive days.*

Sales tax must be collected from the occupant, regardless of whether the room or rooms are rented under a long-term contract

When an occupant rents a hotel room, the hotel operator must collect state and local sales taxes on the rent charged regardless of whether the room is rented under a contract that provides that the occupant will have the right to occupy the room for 90 or 180 consecutive days. When the hotel operator files its sales tax return, the taxes required to be collected must be reported and paid to the Tax Department with the return.

Rules for when an occupant becomes a permanent resident

Once a hotel occupant becomes a permanent resident of a room in a hotel, no further sales tax is payable with respect to the room, provided that the occupant's days of consecutive occupancy are not interrupted. This is so, regardless of whether the right to occupy the room is granted under separate, successive contracts.

Changing rooms in the same hotel

Changing rooms in the same hotel does not interrupt the period of consecutive occupancy.

***Example:** A hotel occupant occupies a particular room in a hotel (first room) for 70 consecutive days, and on the 71st day changes to a different room in the same hotel (second room) and occupies the second room for an additional 20 consecutive days. The hotel occupant is a permanent resident of the hotel as of the 20th day that the occupant occupied the second room in the same hotel (70 days in the first room plus 20 days in the second room equals 90 consecutive days of occupancy in the same hotel) for purposes of the state and local sales taxes (other than the New York City sales tax, which requires 180 days of consecutive occupancy).*

Moving from one hotel to another hotel owned by the same chain

A permanent resident who transfers from one hotel to another hotel, whether or not run by the same operator, loses permanent resident status and must complete the required number of days at the new establishment before becoming a permanent resident there. Similarly, a change of hotels by an occupant who is not yet a permanent resident interrupts the number of consecutive days necessary to establish permanent residency.

***Example:** An individual rents a suite of rooms in a hotel located outside New York City. After 75 days, the individual moves to a different hotel which is owned by the same chain. He spends another 75 days at the second hotel. The individual is not a permanent resident of the first hotel because he did not spend at least 90 consecutive days in residence there. He is also not a permanent resident of the second hotel for the same reason. The individual may not aggregate his time spent between the two hotels to meet the 90-consecutive-day criteria for permanent residency.*

More than one occupant in the same room

When a hotel room has more than one occupant that pays or otherwise furnishes consideration for the right to occupy the room, the status of permanent resident is determined individually for each occupant.

***Example:** An individual rents a room in a hotel. Two weeks later, another person joins the first individual in the same room. Additional rent is charged by the hotel operator for the second occupancy. If both individuals continue to occupy the room, the first individual will become a permanent resident two weeks earlier than the second person, and taxes on the additional rent will continue to be due during the two-week period.*

Hotel room rented by a business and which is used by employees, customers or clients of the business

For the purpose of determining whether a business entity qualifies as a permanent resident of a hotel, days that an employee, customer, or client of the business or other person authorized by the business occupies a room for which the business pays rent to the hotel are considered days that the room is occupied by the business, provided that the employee, customer, client, or other person does not reimburse or pay the business for the right to occupy the room.

In addition, days that a room or rooms rented by a business remain unoccupied (and for which no one reimburses the business) constitute days of occupancy by the business. However, days for which an employee, customer, or client of the business or other person pays or reimburses the business for the right to occupy the room or rooms, whether as part of a package or otherwise, are considered days that the room or rooms are occupied by that person and are not days of occupancy by the business. For more information on this subject, please see TSB-M-03(1)S, *Sales Tax on Rent for Hotel Occupancy and the Exception for Permanent Residents*.

***Example:** A company rents three rooms in a hotel. One of the rooms is occupied by an employee of the company, one room is occupied by a client, and the last room remains unoccupied. The employee does not pay for the right to occupy the room; however, the client compensates the company for use of the room. The days that the room is occupied by the company's employee and the days the third room remains unoccupied are considered to be days of occupancy for the company with respect to such rooms. Accordingly, after 90 consecutive days of occupancy (or 180 consecutive days in the case of New York City's sales tax), the company is considered to be a permanent resident of the two rooms. The days that the room is occupied by the company's client, however, are not considered to be days that the room is occupied by the company. Consequently, the company cannot become a permanent resident with respect to the room that is occupied by the client.*

Temporary absence of a permanent resident

If a hotel occupant who is a permanent resident permits the operator to rent his or her room(s) during the occupant's temporary absence, and the occupant does not have the right to occupy any other room or rooms in the hotel during that absence, the occupant's period of consecutive occupancy in that hotel is considered to have ended. Therefore, when the hotel occupant resumes occupancy in the hotel, he or she will not be considered a permanent resident of the hotel until a new 90-day or 180-day period of consecutive occupancy is established. The person to whom the room or rooms are rented during the absence of the former permanent resident may establish permanent resident status based on whether such person occupies the room(s) for the requisite number of consecutive days.

Once the hotel occupant reaches permanent resident status, the sales tax already paid becomes refundable

When 90 consecutive days of occupancy have been reached, the state and local sales taxes (other than New York City's tax) paid with respect to the 90 days are refundable to the occupant. In New York City, only the state sales tax, the MCTD tax and the NYC \$1.50 fee imposed on hotel occupancy in New York City are refundable to the occupant upon 90 days of consecutive occupancy. Upon completion of 180 consecutive days of occupancy, New York City sales tax paid with respect to the 180 days is also refundable to the occupant.

If an occupant becomes a permanent resident and the hotel operator refunds to the occupant the taxes previously paid, the hotel operator may take a credit in the amount of the taxes paid on its next sales tax return. If the hotel operator does not refund the tax to the occupant, the occupant may file a claim for refund directly with the Tax Department using Form AU-11.

In determining whether to issue a refund and discontinue collecting tax from an occupant who claims to be a permanent resident, the hotel operator may rely upon its books and records to decide whether the claim of permanent residency is valid. However, the Tax Department recommends that, if the hotel operator cannot rely on its books and records to determine whether a particular occupant is a permanent resident, the hotel operator should:

- not issue a refund of the tax collected;
- continue to collect the tax from the occupant; and
- advise the occupant to request a refund directly from the Tax Department.

Once the occupant provides documentation that establishes that the Tax Department granted such a refund request, and the hotel operator has no other reason to conclude that the occupant is not a permanent resident, the hotel operator:

- should discontinue collecting the tax from that occupant until it becomes apparent that the occupant is no longer a permanent resident; and
- may refund any tax that was paid that was not already refunded by the Tax Department and take a credit on its sales tax return in an amount equal to the tax refunded.

Exempt occupants

In order to establish status as an exempt occupant, the occupant claiming exemption must furnish the hotel operator with a proper exemption certificate or other documentation

Purchases by certain individuals and organizations are exempt from sales tax, including the sales tax imposed on rent for hotel occupancy. These exempt individuals and organizations include, but are not limited to:

- New York State and any of its agencies, instrumentalities, public corporations and political subdivisions;
- the United States of America and its agencies and instrumentalities;
- the United Nations and any international organizations of which the United States is a member;
- diplomatic missions and diplomats;
- organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals and that have qualified for exempt status under New York State sales tax law (to be referred to hereinafter

- as section 1116(a)(4) exempt organizations);
- certain posts or organizations consisting of past or present members of the armed forces of the United States; and
- certain Indian nations or tribes.

A purchaser must claim exemption by furnishing the hotel operator with a properly completed exemption certificate or other required documentation. We recommend that the proper exemption certificate or other documentation be provided to the hotel operator when the hotel occupant registers or checks out of the hotel. However, such exemption certificate or other documentation must be presented **not later than 90 days after the last day of the first period of occupancy**. If the hotel operator accepts an exemption certificate or other required documentation after this 90-day period, the hotel operator has the burden of proving that the rent for hotel occupancy was exempt.

Organizations that are exempt from sales tax are also exempt from the NYC \$1.50 fee imposed in New York City that is described on page 7.

New York State and any of its agencies, instrumentalities, public corporations and political subdivisions

The exemption from sales tax on the rent for hotel occupancy for New York State and any of its agencies, instrumentalities, public corporations and political subdivisions applies when an employee or representative of New York State or such other related entities rents a room(s) in a hotel while on official business.

Employees of a state, its agencies, instrumentalities, public corporations or political subdivisions other than New York State, its agencies, instrumentalities, public corporations or political subdivisions, are not entitled to an exemption from the New York State or local sales taxes imposed on hotel occupancy or the NYC \$1.50 fee imposed in New York City.

For New York State and any of its agencies, instrumentalities, public corporations and political subdivisions to claim an exemption from sales tax on rent for hotel occupancy the following procedure must be followed:

- an employee or representative staying in the hotel while on official business and paying the hotel bill with personal funds (such as with cash, personal check or personal debit or credit card) must furnish the hotel operator with **a properly completed Form ST-129, Exemption Certificate, Tax on occupancy of hotel rooms, or Form AC-946, Tax Exemption Certificate**; or

- where an employee or representative of New York State or any of its related governmental entities makes a direct payment of the hotel bill (such as with a state check or standard voucher), the hotel must make a photocopy of the check or voucher.

The hotel operator must retain the exemption certificate or other documentation to substantiate that the transaction was exempt.

The United States of America and any of its agencies or instrumentalities

The exemption from sales tax on the rent for hotel occupancy for the United States of America and any of its agencies and instrumentalities applies when an employee or representative of the United States or other related entities rents a room(s) in a hotel while on official business.

For the United States of America, its agencies, and instrumentalities to claim an exemption from sales tax on rent for hotel occupancy, the following procedure must be followed:

- an employee or representative staying in the hotel while on official business and paying the hotel bill with personal funds (such as with cash, personal check, or personal debit or credit card) must furnish the hotel operator with **a properly completed Form ST-129, Exemption Certificate, Tax on occupancy of hotel rooms**; or
- where an employee or representative of the United States or any of its related governmental entities makes direct payment of the hotel bill, (such as with a federal check or standard voucher) the hotel must make a photocopy of the check or voucher.

The hotel operator must retain the exemption certificate or other documentation to substantiate that the transaction was exempt.

The United Nations or any other international organization of which the United States is a member

The exemption from sales tax on the rent for hotel occupancy for the United Nations or any other international organization of which the United States is a member applies when its employees or representatives rent a room(s) in a hotel while on official business. To establish this exemption, the employee or representative must furnish the hotel operator with **a properly completed Form ST-119.1, Exempt Organization Exempt Purchase Certificate**.

Diplomatic missions and diplomats

The exemption from sales tax on the rent for hotel occupancy for diplomatic missions applies when its employee or representative or a diplomat rents a room(s) in a hotel and furnishes the operator of the hotel with the proper exemption documentation as described below.

For an employee or representative of a diplomatic mission or a diplomat to establish the exemption from sales tax on rent for hotel occupancy, the employee, representative, or diplomat who is staying in the hotel must furnish the hotel operator with either a **properly completed Form DTF-950, Certificate Of Sales Tax Exemption For Diplomatic Missions And Personnel Single Purchase Certificate** or **Form DTF-951, Certificate of Sales Tax Exemption for Diplomatic Missions and Personnel Blanket Purchase Certificate**, in addition to either of the following:

- a valid tax exemption card issued by the United States Department of State or the American Institute in Taiwan (in which case the exemption card must bear the purchaser's picture); or
- other documentation evidencing the person's entitlement to exemption as provided by the United States Department of State.

Note: Form DTF-950 is a single-purchase certificate, and may be used when room rentals are paid for by cash (or cash equivalent), or credit card. Form DTF-951 is the corresponding certificate for multiple purchases over time, but may be used only for purchases paid for by credit card.

***Section 1116(a)(4)
exempt organizations***

The exemption from sales tax on the rent for hotel occupancy for section 1116(a)(4) exempt organizations applies when such an organization, or its employee or representative, occupies the room and the organization is the direct payer of record. (See page 18 of this publication for a description of section 1116(a)(4) organizations). The organization must be identified on the hotel bill or invoice along with the individual who occupied the room. The organization is the direct payer of record when payment is made directly from the funds of the organization, such as with a check from the organization, with the organization's credit card, cash or other funds. If the employee or representative pays the hotel bill with a personal check, personal credit card or other personal funds, the exemption afforded by section 1116(a)(4) organizations does not apply. To establish this exemption, the employee or representative must furnish the hotel operator with a **properly completed Form ST-119.1, Exempt Organization Exempt Purchase Certificate**.

***Certain posts or
organizations of past
or present members of
United States Armed
Forces***

The exemption from sales tax on the rent for hotel occupancy for certain posts or organizations consisting of past or present members of the Armed Forces of the United States applies when authorized representatives of such posts or organizations rent a room(s) in a hotel while acting on behalf of the post or organization.

For veterans posts or organizations to establish the exemption from sales tax on rent for hotel occupancy, the authorized representative who is the hotel occupant must furnish the hotel operator with **a properly completed Form ST-119.5, *Exempt Organization Certification for Hotel or Motel Occupancy by Representatives of Veterans Organizations***. Payment may be made with funds of the post or organization, such as with a check from the organization, with the organization's credit card, cash or other funds of the organization, or the authorized representative may use a personal check, credit card or cash to pay the bill.

Certain Indian nations or tribes exempt from sales tax

The following Indian nations and tribes residing in New York State are exempt from the sales tax imposed on the rent for hotel occupancy:

- Cayuga
- Oneida Indian Nation
- Onondaga Nation of Indians
- Poospatuck
- St. Regis Mohawk
- Seneca Nation of Indians
- Shinnecock
- Tonawanda Band of Senecas
- Tuscarora Nation of Indians

The exemption from sales tax on the rent for hotel occupancy applies when the exempt Indian nation or tribe, or a member, officer, or employee of that nation or tribe, rents a room(s) in a hotel and the exempt Indian nation or tribe is the direct payer of record.

The Indian nation or tribe must be identified on the hotel bill or invoice along with the individual who occupied the room. The Indian nation or tribe is the direct payer of record when payment of the hotel bill is made directly from the funds of the nation or tribe, such as with a check of the nation or tribe, with a credit card of the nation or tribe, cash or other funds of the Indian nation or tribe. If the member, officer or employee pays the hotel bill with a personal check, personal credit card or other personal funds, the exemption afforded certain Indian nations and tribes does not apply. To establish this exemption, the member, officer or employee of the Indian nation or tribe must furnish the hotel operator with **a properly completed Form ST-119.1, *Exempt Organization Exempt Purchase Certificate***.

Hotels operated by section 1116(a)(4) organizations

Tax exempt organizations are not required to collect sales tax on hotel occupancy when the organization operates a hotel in furtherance of the organization's exempt status

When a section 1116(a)(4) exempt organization (see page 19 of this publication for a description of section 1116(a)(4) exempt organizations) operates a hotel, or offers rooms for rent, the rent is not subject to sales tax provided that:

- the rooms being rented are located in the same premises that the organization's other exempt activities are carried out; and
- the operation of the hotel or the rental of the rooms is in furtherance of the organization's exempt activities.

Example: A YMCA qualifying as an exempt organization under section 1116(a)(4) of the Tax Law rents rooms in the building where it carries on its exempt activities and the rental of rooms is in furtherance of those activities. The rooms are rented at the rate of \$20 per day. The rent is not taxable because the YMCA is an exempt organization under section 1116(a)(4) of the Tax Law, the rental of the rooms is an activity carried on in furtherance of its exempt purposes, and the rooms being rented are located on the same premises that the YMCA's other activities are carried out.

Example: An organization that supports international amateur sports competitions operates a hotel which is open to the general public. The organization's other activities are not carried on in the same building as the hotel, nor is the operation of the hotel in furtherance of the organization's exempt activities. The charges for occupancy at the hotel are subject to state and local sales tax.

Hotels operated by colleges and universities

A dormitory, apartment, house or other facility operated by a school, college or university to provide living quarters for students is not considered to be a hotel

A dormitory, apartment, house or other facility operated by a school, college or university to provide living quarters for students is not considered to be a hotel, and the charges to students for occupying the residences are not subject to sales tax.

However, rentals of these accommodations to others (such as parents or relatives of students, alumni of the college or university or attendees of seminars and other educational events) are subject to state and local sales tax.

College or university-operated hotels that have 100 or more rooms available for occupancy must collect state and local sales tax on their charges for occupancy, regardless of whether the hotel is operated as part of that institution's educational activities.

However, occupancy provided to the general public by a college or university in a hotel that is operated as part of that institution's educational activities will not be subject to tax if the hotel offers fewer than 100 rooms for occupancy. Occupancy in a hotel not operated as part of the institution's educational activities is subject to sales tax regardless of the number of rooms provided for occupancy. (See TSB-M-96(6)S, *Lodging Provided By College or University Operated Hotels Subject to Sales Tax*, for more information).

Nontaxable occupancies

Summer camps and other overnight camps for children

A camp for children that provides overnight sleeping accommodations and a program of instructions, training or other organized activities that campers are required to pursue under the supervision of counselors or other supervisory personnel is not a hotel. Therefore, the fees paid for the children to attend are neither subject to sales taxes on hotel occupancy nor to any sales taxes that are imposed on meals under section 1105(d) of the Tax Law. However, unless otherwise exempted or excluded from tax, if guest facilities are provided for parents or others, sales taxes are due on the occupancy charges of more than \$2 per day and on any receipts from the sale of meals to such occupants. In no event are sales taxes imposed on rentals of campsites, trailer sites and other like real property.

Campsites, trailer sites

The rental of campsites, trailer sites and other like real property constitutes the rental of real property, the receipts from which are not subject to sales tax.

Rental of individual, privately owned, summer homes, camps, beach houses and similar properties

As a general rule, the rental of individual, privately owned, summer homes, camps, beach houses and similar properties, where no services commonly associated with hotel occupancy are provided, constitute the rental of real property. Therefore, the receipts are not subject to sales tax.

Nursing homes, family care homes, rest homes and similar facilities

A facility that is registered with or licensed by a New York State governmental agency, whether publicly or privately owned and operated, which accepts persons who require special care on account of age, illness, or mental or physical incapacity, and which provides this special care either by nurses, orderlies or aides, is not considered to be a hotel or motel. Accordingly, the charges for occupancy in this type of facility are not subject to sales tax.

Examples of these facilities are nursing homes, rest homes, convalescent homes, maternity homes, homes for persons with a disability, residence homes for adults, assisted living facilities and similar facilities.

Bungalows

A bungalow is a complete living unit with its own kitchen, bathroom and sleeping rooms that is rented furnished for single-family occupancy. The rent for occupancy of a bungalow is not subject to sales tax, provided:

- house cleaning, maid service, room service, mail service, entertainment, planned activities and other services that are commonly provided by hotels are not provided by the lessor; and
- the rental is for at least one week.

The furnishing of linen by the lessor with the rental of a bungalow without the services of changing the linen does not alter the nontaxable status of the rental charges. In addition, the provision of cleaning, laundering and similar services for an optional and separate charge does not, in and of itself, render the rental of a bungalow to be the taxable rental of a room or rooms in a hotel.

Motel efficiency units

The charge to rent an efficiency unit in a motel is not subject to sales tax provided:

- the unit comprises sleeping facilities, a cooking area, a dining area and a bathroom; and
- it is rented for at least seven consecutive days; and
- the motel operator does not provide house cleaning, maid service, room service, or other common hotel services.

Complimentary accommodations

When a hotel furnishes complimentary accommodations to individuals for which there is no rent or other consideration paid, the hotel is not required to collect sales tax on the normal cost of the room. ***Exception:*** Where there is consideration, such as the promise by the occupant of the room to bring future business to the hotel by a tour guide, travel representative or other person, the room is subject to sales tax based on the normal rental price of the room.

Employee meals and lodging

Meals and lodging furnished to employees for the employer's convenience

Meals and lodging furnished by a hotel operator to an employee for the hotel operator's convenience are not subject to sales tax provided:

- the employer receives no cash or other consideration for the meals or lodging from the employee; and

- the value of the meals or lodging is not income to the employee under federal or New York State income tax laws.

If a hotel operator receives cash or other consideration from an employee for meals or lodging or the value of the meals or lodging is income to the employee for federal or New York State income tax purposes, the meals or lodging are subject to sales tax. For example, a hotel operator receives other consideration if the cost of the meals or lodging is withheld from the employee's wages.

If an employee becomes a permanent resident of the hotel, the hotel operator is no longer required to collect sales tax on the charges to the employee for occupancy, and the employee is entitled to a refund of state and local sales taxes previously paid on charges for occupancy at the hotel. (See page 17 for more information.)

Hotels operating on the American Plan

The American Plan is a system where one price covers room rent, food and service

A hotel operating on the American Plan, modified American Plan or other similar plan that combines the provision of hotel occupancy and food services for a single charge must collect sales tax on its total charge. If the occupant becomes a permanent resident, the hotel operator should no longer collect sales tax on the charge for the room, but must continue to collect sales tax on the charge for the meals. The occupant is entitled to a refund of any sales taxes paid on the room rental prior to the occupant becoming a permanent resident.

Once the occupant of the room becomes a permanent resident and the charges for the room become nontaxable, the hotel operator must determine a separate charge for the meals and the room. In lieu of establishing separate charges, the operator may use the schedule that follows to determine the percentage of the total charge to be apportioned to meals, and collect sales tax based on that amount.

Schedule for apportioning charges under the American Plan

If total charge includes:	% allocable to	
	<u>Room</u>	<u>Meals</u>
Room, breakfast, lunch, dinner	50%	50%
Room, lunch, dinner	60%	40%
Room, breakfast, dinner	60%	40%
Room, breakfast, lunch	70%	30%
Room, dinner	75%	25%
Room, lunch	85%	15%
Room, breakfast	85%	15%

If the hotel operator neither separately states the charge for room and meals nor uses the schedule, the entire charge is subject to the state and local sales tax whether or not the occupant is a permanent resident.

A hotel operator offering a free continental breakfast (juice, pastry and coffee) may not separately state a reasonable value for the breakfast or use the American plan schedule as the entire charge is subject to tax as rent for the room.

Rental of meeting rooms or similar accommodations

General rule

The rental of a meeting room or rooms in a hotel by itself will not be subject to the sales tax on rent for hotel occupancy where the meeting room constitutes a place of assembly, the rental of which is not the rental of a room or rooms in a hotel. See page 10 for the definitions of *room or rooms in a hotel* and *place of assembly*.

Rental of a meeting room in connection with the sale of food and drink

However, section 1105(d) of the Tax Law imposes sales tax on the receipts, including any cover, minimum, entertainment or other charge, from every sale of beer, wine or other alcoholic beverages and food or drink of any nature sold in or by restaurants, taverns or other establishments or by caterers. Therefore, the rental of a place of assembly, such as a meeting room or a banquet hall, is subject to sales tax if it is made in connection with the sale of food and/or drink.

Rental of meeting room in connection with a banquet or other catered event

If a meeting room or similar hotel accommodation that constitutes a place of assembly is rented for the purpose of holding a banquet or other catered event and the catering is provided by the hotel or by a caterer hired by the hotel, then the charge for rental of the room is considered to be part of the charge for the event, whether or not the charge for the room is separately stated. Thus, the charge for the room is subject to state and local sales tax as part of the cost of the catered event. If the hotel hires a caterer to provide the food and drink and other services for a banquet or other catered event, the amount paid by the hotel to the caterer is subject to tax as catering services and the purchase cannot be made for resale. However, the hotel may take a credit on its sales tax return for the sales tax paid to the caterer in these circumstances.

Hotels may also offer party or banquet package plans where a single price includes the rental of a meeting room or banquet hall, food and drinks, entertainment, and other items such as place settings and flower arrangements. The entire charge for these types of package plans is subject to sales tax as the sale of a catering service. However, the NYC \$1.50 fee imposed in New York City (see page 7) would not be imposed on this charge.

***Example:** A hotel rents out part of its facilities for wedding receptions and private parties. The guest pays a per-person fee for a package plan under which the hotel provides the facilities, the food and drink, and a band. The charge for this package plan is subject to sales tax as it is a charge for a catering service.*

***Example:** A business holds a dinner meeting in one of the small dining rooms of a hotel. The hotel separately states the cost of the dinner and the cost of the room on its books and on the bill given to the business. The entire charge is subject to state and local sales tax as a charge for the sale of food and drinks under section 1105(d) of the Tax Law.*

Rental of meeting room with the provision of break time food

If a meeting room or similar hotel accommodation that constitutes a place of assembly is rented and the hotel provides incidental snacks at break-time, sales tax is imposed only on the break-time food and beverages, provided that the charge is separately stated and reasonable. Examples of break-time food and beverages are coffee, tea, donuts, cookies, candy, and ice cream. Break-time food does not include, for example, a continental breakfast, buffet lunch, or hors d'oeuvre with beverage service. Therefore, the entire charge for the rental of a meeting room in a hotel coupled with the provision of, for example, a continental breakfast or a buffet lunch is subject to state and local sales tax.

Miscellaneous transactions

Check rooms for hats, coats, parcels, etc.

A fixed amount paid for check-room services, either for each item checked or as a lump-sum fee, is subject to sales tax as a storage charge.

If, however, a hotel has a check room where a customer can check items such as parcels, luggage, or clothing at no charge, and the customer has the option of paying the check-room operator in the form of a tip or other gratuity, the tip or gratuity is not subject to sales tax.

Safe deposit box rentals and similar services

Charges made by a hotel for storage of an occupant's possessions are subject to sales tax. This includes charges for safe deposit boxes, vaults and facilities used to store hotel guests' valuables.

Room service

Charges for room service are subject to sales tax as part of the cost of the food and drink served. Also, charges for corkage fees and setups, including ice, water, soda, soft drinks, and similar items are subject to sales tax as part of the sale of food and drink.

Charges for television and movie services

Charges for basic television services, whether by non-cable, basic cable or satellite, and for in-room use of movies, videos or other forms of entertainment, including video games, pay-per-view movies, events, channels or other optional premium programming are subject to sales tax as part of the charge for occupancy, even if these charges are separately stated on the bill or other receipt given to the guest.

Charges for Internet access

Separately stated charges for Internet access are not subject to sales tax.

Facsimile or copying services

Charges for intrastate facsimile (fax) and copying services are subject to sales tax. However, the sale of photocopies made through a coin-operated photocopy machine where the charge for each page is 50 cents or less and for interstate or international facsimile services are exempt from sales tax.

Parking and garaging services

Charges for garage or parking services are subject to sales tax. If the hotel is located in New York City, these charges are subject to a higher rate of local New York City sales tax. In addition, if the hotel is located in the borough of Manhattan (New York County), these charges are also subject to the additional parking tax imposed on parking services within that borough. For additional information on the local sales tax imposed on charges for garage and parking services in New York City, including Manhattan. (For addition information, see TSB-M-80(10)S, *Enactment of New York City Special Taxes on Receipts From Sales of Services Providing Parking, Garaging and Storing of Motor Vehicles (Manhattan)*;-TSB-M-85(14)S, *1985 Legislation-Chapter 330-Exemption From New York City Additional Tax on Parking, Garaging and Storing of Motor Vehicles*; and -TSB-M-96(13)S, *Change in the New York City Parking Tax Exemption for Manhattan Residents*.)

Telephone service

Charges made by a hotel for providing telephone equipment and in-house (for example, room-to-room calls) telephone services are subject to sales tax as part of the charge for hotel occupancy. Charges made by a hotel for local telephone service are also part of the charge for occupancy unless the hotel bills the guest on a per-call basis. If a hotel bills guests on a per-call basis, such calls are not part of the charge for occupancy. By billing on a per-call basis, the hotel is considered to be selling a telephone service. The hotel, by charging on a per-call basis, is deemed to be reselling a service that it purchased from the telephone company. Thus, the hotel is required to collect sales tax on such telephone services unless the telephone calls are interstate or international calls.

Example: A guest uses the telephone to make local calls. The hotel lists the charges for the room rental and the charges for local telephone service separately, but does not bill the telephone usage on a per-call basis. The total of the charges for the room rental and the telephone calls is subject to sales tax as charges for occupancy.

Example: Assume the same facts as the previous example, except that the hotel bills the guest on a per-call basis for telephone usage. In this case, the charges for the telephone services are not part of the charges for hotel occupancy, and are not to be used in determining the daily rental charge for the accommodations. The hotel operator is, however, required to collect sales tax on the intrastate telephone calls. Any charges for interstate or international telephone calls are not subject to sales tax.

The hotel may either claim a credit on its sales and use tax return for the taxes it paid on the telephone service which it resold to its guests, or the hotel may claim a refund of these taxes. The hotel may not claim any credit or refund for tax paid to the telephone company on charges made to the hotel for the use of telephone equipment. (For additional information, see TSB-M-78(9)S, *Sales Tax Application To Hotel and Motel Telephone Charges.*)

Rental of recreation equipment and other tangible personal property

A hotel is required to collect sales tax on charges for the rental of tangible personal property such as golf carts, golf clubs, lawn and pool chairs, and other equipment.

Example: A hotel rents beach chairs and umbrellas to persons who use its swimming pool. The rental of the beach chairs and umbrellas is not considered part of the charge for hotel occupancy. Sales tax must be collected on the rental transactions as the sale of tangible personal property.

Admission charges to participatory and non-participatory sports activities

Fees charged by a hotel for admission to sports activities in which the patron actively participates (such as tennis, golf, swimming and skiing) are not subject to sales tax.

Fees charged by a hotel for admission to sports activities at which the patron is a spectator are subject to sales tax.

Theater tickets and similar services

Charges for movie theater tickets and dramatic or musical arts performances are not subject to sales tax.

Valet and laundry services

Charges for valet, tailoring or shoe shining services and to launder guests' clothing are not subject to sales tax.

Transportation services

Charges for transportation services such as buses or hotel shuttles are not subject to sales tax. The exclusion from sales tax for transportation services does not include the rental of a car or any other motor vehicle.

Leasing of space in hotel building and related transactions

Leasing building space

Charges for leasing portions of the building, such as for a shop in the hotel, are not subject to sales tax because they are charges for the rental of real property. Rent is not subject to sales tax even if it includes heat, hot water, gas, electricity, air conditioning, ventilation, elevator service and similar services. However, there may be other local taxes associated with the rental or leasing of real property, such as, for example the Commercial Rent Tax imposed in New York City under Chapter 7 of Title 11 of the Administrative Code of the City of New York.

Interior cleaning and maintenance services

If a hotel offers interior cleaning and maintenance services to its business tenants and separately states the charge, the hotel is required to collect sales tax on the charge. Interior cleaning and maintenance services include ordinary janitorial services such as: dusting furniture, pictures, window sills and ledges; vacuuming furniture and carpets; cleaning interior walls and woodwork; cleaning, disinfecting and deodorizing bathrooms and bathroom fixtures; stripping, washing, waxing and buffing floors; cleaning appliances; cleaning ash trays; oiling door hinges; replacing light bulbs; replacing washers in faucets; adjusting thermostats; cleaning or changing filters; reading gauges and lubricating equipment; and cleaning outlets from stoves, ovens and plumbing fixtures.

Additional or separately stated charges for window cleaning, rodent and pest control, and trash removal are also subject to sales taxes.

Concessions

When a hotel operator leases certain operations within the hotel to independent concessionaires who are responsible for their own purchases and sales, the concessionaire, not the hotel operator, is responsible for collecting and remitting sales tax due on receipts from these operations. These leases may include the lease of a tobacco stand, a beauty salon, a clothing store, a gift shop, a snack bar, or similar business operations.

If, however, the hotel retains control of the sales activities and the receipts from the concession shops, then the hotel operator is required to report the sales and remit the sales tax collected from the operation. In

this case, the concessionaire must also file a sales tax return and report the amount of sales made by the business. The concessionaire should attach to the return, a statement to the effect that:

- it is a leased department or concession;
- the hotel is responsible for reporting sales made by the department or concession; and
- the name, address, and sales tax vendor identification number of the hotel.

Both the leased department or concession and the hotel operator shall be jointly responsible for the collection and remitting of the taxes on the sales made by the leased department or concession.

Capital improvements and repair and maintenance expenses

General information

It is important for hotel operators to understand the sales tax implications with respect to services to real property that the hotel owns and operates.

Services to real property are classified as either capital improvements or repair, maintenance or installation services.

A purchaser does not pay sales tax to a contractor who makes a capital improvement to real property. However, charges for the repair or maintenance of real property are subject to sales tax. In addition, charges for installing tangible personal property that remains tangible personal property upon installation are subject to sales tax.

Publication 862, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, contains useful information and categorizes generally a variety of services to real property as either a capital improvement or as repairs or maintenance services to real property.

What is a capital improvement

A *capital improvement* is an addition or alteration to real property that:

- substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and
- becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and
- is intended to become a permanent installation.

Repair and maintenance service

A repair or maintenance service to real property relates to keeping real property in a condition of fitness, efficiency, readiness and/or safety or restoring it to such condition.

Installation services

Installation services are services related to setting up tangible personal property or putting it in place for use.

End result test

For many hotel operators, services to hotel premises are ongoing. Certain services to real property, taken by themselves, do not constitute a capital improvement. For example, painting and wallpapering an existing room are not usually a capital improvement. However, if any part of a major renovation project is a capital improvement project, any necessary repair work done in conjunction therewith becomes part of the capital improvement. That is, if the *end result* of the project is a capital improvement, all of the components of the project are a capital improvement.

Remodeling

One of the more common situations a hotel operator will be involved in is the remodeling of an entire floor or the renovation of individual rooms in a hotel. In this context, it is important to differentiate between remodeling and renovations as opposed to *new construction of a building or structure*, *new construction of an addition to an existing building or structure* or *total reconstruction of an existing building or structure*, because this affects whether floor covering is allowed as part of a capital improvement. The term *floor covering* includes carpet, carpet tile, carpet padding, linoleum and vinyl roll floor covering, linoleum tile, vinyl tile and other similar floor coverings. The installation of floor covering is exempt as a capital improvement only where it is the initial finished floor covering and it is installed as part of the new construction of a building or structure, an addition to an existing building or structure, or a total reconstruction of an existing building or structure. Otherwise, the charge for the installation of floor covering is subject to sales tax as the installation of tangible personal property. Note that the floor covering does not include flooring such as wood flooring, ceramic tile, terrazzo, marble, concrete or other similar flooring. Therefore, the installation of flooring, in and of itself, may constitute a capital improvement, regardless of whether it is installed as part of new construction, an addition or a total reconstruction of an existing building or structure.

New construction of a building or structure

New construction of a building or structure means the original construction of a building or structure that did not exist before the construction.

New construction of an addition to an existing building or structure

New construction of an addition to an existing building or structure means the original construction of a new room, wing or other discrete, substantial unit of a building or structure that enlarges the exterior of the existing building or structure.

Total reconstruction of an existing building or structure

Total reconstruction of an existing building or structure means the complete rehabilitation or replacement of most of the major structural elements of an existing building or structure, such as the roof, ceiling trusses, floor joists, walls, support columns, support beams, girders and the foundation.

Floor covering installed as the initial floor covering shall be deemed to be installed in new construction, a new addition or total reconstruction where it is installed within six months of the date of the completion of the new construction, new addition or total reconstruction.

Example: *A hotel operator undertakes the reconstruction of several floors in its hotel premises. This project is accomplished by taking out of operation one floor at a time. Under the project, certain walls are demolished and replaced. Wall and ceiling moldings are removed and replaced with new moldings. All existing electrical fixtures, devices, switches and outlets are removed and replaced. All existing finishes are stripped. All existing walls, ceilings, soffits and fascias are completely covered with a layer of new plaster, which is then sanded and painted. The bathroom is gutted of all existing fixtures, including sink, cabinets and bathtub and these items are replaced. All existing floor coverings, including wall-to-wall carpeting, padding and linoleum roll flooring are removed and replaced.*

The remodeling project constitutes a capital improvement. Therefore, all services and installations described above, with the exception of the floor covering, constitute capital improvements. Since most of the major structural elements of the building which constitutes the hotel premises are neither rehabilitated or replaced, this project is not considered a total reconstruction of an existing building, and does not fall in the category of new construction of a building or an addition to a building. Therefore, the newly installed floor covering does not qualify as part of the capital improvement.

Example: *A hotel operator undertakes a project which consists solely of painting and wallpapering all the guest rooms on a single floor of the hotel premises. Painting and wallpapering, by themselves, constitute a repair or maintenance service and*

not a capital improvement. Therefore, the payments made by the hotel operator to the painting and wallpapering contractors are subject to sales tax.

Built-in installations

The service of installing tangible personal property, which, by its installation, becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the real property or the article itself may be a capital improvement. In the case of hotels, examples of such installations, include, but are not limited to, built-in:

- cabinets
- dishwashers
- ovens
- ranges and
- air conditioners.

Attached furniture and other hotel furnishings

Note: For purposes of state and local sales tax the installation of otherwise free-standing furniture and other hotel furnishings that are bolted or similarly attached to the wall or floors (usually to prevent theft by hotel guests) and the installation of small appliances are not considered services to real property that constitute a capital improvement.

Purchases by hotel operators

General

Generally, all purchases by a hotel operator of furniture (including dressers, night stands, headboards, chairs, dressers, televisions, radios, lamps, and other tangible personal property for use in the hotel's guest rooms (sheets, towels, soap, glasses, ice buckets, etc.), baths, saunas, lobby, vestibule, hallways, guest corridors, elevators, restaurant, dining hall, mezzanine, lounges, salons and other areas of the hotel are subject to sales taxes. Other examples of items that fall into this category are tables, bars, bar stools, portable dance floors, and bandstands.

In addition, charges for the installation of furniture are generally subject to sales taxes.

Purchases of machinery and equipment (such as computers, printers, credit card machines, cash registers, facsimile (fax) machines, and photocopiers) are subject to sales tax.

Note: Section 1110 of the Tax Law imposes a compensating use tax on New York State residents on the use within New York State of certain tangible personal property and certain enumerated services which are:

(1) purchased by a New York resident as defined in the sales and use tax regulations, outside of New York State, for which no New York State sales tax was paid when purchased, and which would have been subject to sales tax if purchased in New York; or (2) purchased in New York State, but, for various reasons, the sales tax was not paid at the time of purchase. For example, if a hotel operator purchases televisions outside of New York State from a vendor who is not required to be registered for New York State sales tax purposes, for use in the operators hotel located in New York State, and New York sales tax is not collected by the vendor, the hotel operator will owe a compensating use tax based on the purchase price of the televisions when they are used in New York State. See Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department Questions and Answers* and Publication 750, *A Guide To Sales Tax In New York State*, in the section entitled *Taxable Business Purchases*.

Recreational equipment

Purchases of recreational equipment for use by hotel guests for no additional charge are subject to sales tax.

Purchases of recreational equipment that will be used *exclusively* for rentals (as distinguished from purchases for use by guests for no charge) are not subject to sales or use tax since they are considered to be purchases for resale. Purchases of equipment that is to be used exclusively for rental purposes may be made tax exempt by issuing Form ST-120, *Resale Certificate*, to the supplier.

Recreational equipment includes items such as lawn and deck chairs and umbrellas, golf carts, tennis rackets, scuba diving gear, bows and arrows, hunting gear, bowling shoes and balls, fishing poles, nets, and creels.

Kitchen supplies, appliances etc.

Purchases of linens, kitchen and bath towels, napkins, cutlery, silverware, glassware, chinaware, serving utensils, table covers, straws, stirrers, paper products (paper cups, plates, towels and so forth) and similar items for use in the kitchen or dining room are subject to sales tax.

Purchases of kitchen appliances and equipment (for example, stoves, refrigerators, microwave ovens, toasters, pots, pans and other cookware) are subject to sales tax. Also, see page 35 for the sales tax treatment of built-in installations.

Cosmetics, toiletries, etc.

Purchases of cosmetics, toiletries, hygiene products and other personal items provided with the rental of a room are subject to sales tax. This includes purchases of toothbrushes, toothpaste, mouthwash, shampoo, soap, deodorants, toilet paper, and cosmetics.

Likewise, purchases of products to be used in a barber or beauty salon are subject to sales tax.

Laundering and dry cleaning services

Purchases of laundering and dry cleaning services for hotel room linens (bath towels, wash cloths, sheets, pillowcases, table linens, and so forth) are not subject to sales tax.

Uniforms

Purchases of laundering and dry cleaning services for hotel employee uniforms are not subject to sales tax.

If the hotel sells uniforms to its employees, the hotel can purchase the uniforms for resale by issuing Form ST-120, *Resale Certificate*, to its supplier. The hotel is required to collect any applicable sales tax when the hotel sells the uniforms to its employees. However, beginning April 1, 2006, there is an exemption from New York State sales tax for clothing, footwear, and items used to make or repair exempt clothing, costing less than \$110 per item or pair. The exemption does not apply to locally imposed sales taxes unless the county or city imposing those taxes elected the exemption. Please see:

-Publication 718-C, *Local Sales and Use Tax Rates On Clothing and Footwear*;

-TSB-M-06(6)S, *Year-Round Sales and Use Tax Exemption of Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing (Effective April 1, 2006)*;

-TSB-M-06(6.1)S, *Sales and Use Tax Exemption of Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing (Effective April 1, 2006) (Exemption within counties and cities)*; and

-TSB-M-06(6.2)S, *Sales and Use Tax Exemption of Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing (Change in local elections for counties and cities)*; or

- visit the Tax Department's Web site for further updated information at www.tax.ny.gov.

Interior cleaning and maintenance services

Purchases of interior or exterior cleaning and maintenance services are subject to sales tax. Interior and exterior cleaning and maintenance services include services such as:

- rodent and pest control and other extermination services;
- window washing;
- trash removal;

- vacuuming furniture and carpets;
- cleaning, disinfecting and deodorizing bathrooms and bathroom fixtures;
- stripping, washing, waxing and buffing floors;
- changing linens;
- snow removal;
- landscaping services; and
- lawn care services.

When interior or exterior cleaning and maintenance services are performed by an employee of the hotel, the wages, salaries or other compensation paid to the employee for the performance of such services are not subject to sales tax.

Telephone equipment

The purchase of telephone handsets, cords, wires and other hookup equipment for guest rooms is subject to sales tax.

However, if the hotel sells telephone services on a per-call basis, the hotel is considered to be selling a telephone service. In that case, the hotel may purchase the telephone equipment that is used directly and predominantly (over 50% of the time) in receiving or initiating telephone communications exempt from sales tax. Telephone handsets, cords, wires and other hookup accessories are telephone equipment used in receiving or initiating telephone communications.

Chart of Transactions Relating to the Operation of a Hotel

The following chart provides a general guide to the taxable or exempt status of transactions, goods, and services sold and purchased by hotels and similar establishments. The taxable or exempt status of many of the transactions, goods and services listed is dependent upon whether certain conditions are met. Therefore, explanation and comments have been added to provide guidance in specific situations where required.

Transaction/item or service sold or purchased	Taxable? Yes/No/Other	Additional comments/explanation, etc.
Hotel room revenue		
Rent received for occupancy (transient room rental)	Yes	If an occupant becomes a permanent resident (after 90 days for state sales tax purposes and 180 days for NYC sales tax purposes), the entire period of occupancy becomes nontaxable-See page 14.
Guaranteed no-show revenue	Yes	Customer reserves room in advance. Agreement between customer and hotel provides that customer receives the right to occupy the hotel room on the dates specified, whether the customer arrives to utilize the room or not. The room will not be released to another guest, whether the customer arrives or not.
Complimentary rooms	Other -not taxable if facts indicate that no consideration is truly being paid for the room(s)	Examples: <ol style="list-style-type: none"> 1) Complimentary rooms provided by hotel when a group rents a certain number of rooms are not considered to be separately taxable, but are considered part of the total taxable charge to the group. 2) Free rooms provided to employees are not subject to tax provided that the value of the lodging is not considered wages for federal and state personal income tax purposes. 3) Free rooms provided to vendors, such as musicians, photographers, contractors and other specified vendors who provide services to the hotel are subject to tax at the normal cost of the room. 4) Free rooms provided to a person,

Transaction/item or service sold or purchased	Taxable? Yes/No/Other	Additional comments/explanation, etc.
		such as, for example, a tour guide or travel representative, where there is consideration, such as the bringing of future business to the hotel, are subject to tax at the normal cost of the room.
Early departure fees	Yes	Considered rent for occupancy
Late departure fees	Yes	Considered rent for occupancy.
Cancellation fees	No	Amount charged when reservation is cancelled; at no time does the customer have the right to occupy the room. Not considered rent for occupancy.
Attrition fees	No	Penalty charged because a group did not fulfill their total event commitment; for example, a group event books 200 rooms, but, for various circumstances, ends up renting only 150 rooms for their event. The hotel charges the group a penalty for not renting the 50 remaining rooms that had been reserved.
Packages (example: golf, honeymoon, ski)	Yes	Hotel charges one lump-sum fee for room(s) for a specified number of nights and a variety of other goods and services.
Rooms rented to tour operators, meeting planners or others who sell tour packages and meeting packages to their customers which include the use of the rooms by their customers	Yes	See example on page 9.
Pet charges	Yes	Rent for occupancy whether or not separately stated
Pet clean-up fees	Yes	Rent for occupancy whether or not separately stated.
Child care charges	No	Provided by hotel employees or by unrelated third party.
Rollaway bed charges	Yes	Taxable as rental of tangible personal property or as rent for occupancy.
Refrigerator charges	Yes	Taxable as rental of tangible personal property or as rent for occupancy.
Safe charges	Yes	Taxed as storage of tangible personal property.
Complimentary meals provided with room where hotel purchases food and	No	The hotel may owe use tax on any otherwise taxable purchases of the

Transaction/item or service sold or purchased	Taxable? Yes/No/Other	Additional comments/explanation, etc.
prepares meals		components of the meal which are purchased for resale but not actually sold. See section 528.2 of the Sales and Use Tax Regulations for information on the exemption from sales tax for the sales of certain food and food products.
Complimentary meals provided with room where hotel purchases prepared food and meals from a leased restaurant and/or outside vendor	No	Hotel must pay tax on any of its purchases of prepared food and meals from a restaurant or other outside vendor.
Complimentary beverage provided with room where the hotel purchases and serves the drinks	No	Hotel may owe use tax on any purchases that were made for resale for products that were not actually sold.
Complimentary beverage provided with room where the hotel pays an outside vendor to provide the beverages to its guests	No	Hotel would owe tax on its purchases from the outside vendor in this instance.
Complimentary bottled water provided in room	No	Hotel would owe use tax on the bottled water if it had purchased it tax exempt for resale.
Bottled water sold at retail	Yes	
Damage fees	Yes	Considered incidental part of rent for occupancy or a charge for the maintenance/repair of the damaged property
Food and beverage revenue		
Restaurant food sales	Yes	
Beverage sales (liquor, wine and beer)	Yes	
Voluntary gratuities (whether fully distributed to servers or if establishment retains a portion)	No	
Mandatory separately stated gratuities that are fully distributed to servers, whether or not the mandatory gratuities are required under a union contract or other labor/management agreement	No	Section 527.8(1) of the Sales and Use Tax Regulations relating to gratuities provides that “Any charge, made to a customer, is taxable as a receipt from the sale of food or drink unless: <ol style="list-style-type: none"> 1) the charge is separately stated on the bill or invoice given to the customer; and 2) the charge is specifically designated as a gratuity, and

Transaction/item or service sold or purchased	Taxable? Yes/No/Other	Additional comments/explanation, etc.
		3) all such monies received are paid over in total to employees.”
Mandatory separately stated gratuities where the establishment retains a portion, whether or not the mandatory gratuities are required under a union contract or other labor/management agreement	Yes	
Room service food and beverage	Yes	
Separately stated delivery charges for room service	Yes	
Cover or minimum	Yes	
Corkage	Yes	Fee charged by restaurant or similar establishment for serving wine or liquor brought in by customer; taxable as catering
Cake cutting charges	Yes	Guest provides cake; taxable as catering
Ice carving charges	Yes	
Employee meals provided free of charge	Other: No, as long as the value of the meal does not constitute income to employee	
Employee meals provided for a charge above cost, at cost or below cost	Yes	
Complimentary food e.g., for customer satisfaction or for promotional purposes	No	Hotel must pay use tax on any otherwise taxable food and beverages that were purchased exempt for resale but not actually sold
Meeting room revenue (no meals served)	No	Meeting room must meet the definition of a <i>place of assembly</i> as discussed on page 10.
Meeting room revenue (meals served)	Yes	
Meeting room revenue (breaktime food served e.g., coffee, water, candy and/or cookies)	Other: separately stated charge for meeting room not subject to tax; separately stated charge for food is subject to tax; if charge for room and food is not	Note, break-time food does not include continental breakfast, buffet lunch, etc. See page 28 for further information of the provision of food and drink in conjunction with the rental of a meeting room.

Transaction/item or service sold or purchased	Taxable? Yes/No/Other	Additional comments/explanation, etc.
	separately stated entire charge is taxable	
Banquet room/convention charges which are separately stated and services which are performed by hotel employees or unrelated third party (services include, for example, rigging, electrical cabling, light setup fees, etc.)	Yes; charge by hotel to guest is part of catering charge	If work is contracted for by hotel and performed by unrelated third party, charges to hotel are subject to tax; wages paid to employees of hotel for work performed for hotel are not taxable.
Floral arrangements purchased to decorate banquet room	Yes	
Cancellation fees: banquet rooms	No	Liquidated damages because an event was cancelled. Damages may cover lost revenue not merely room rental, but from food that was ordered but thrown away, party decorations etc.
Attrition fees: banquet rooms	No	Fee charged because group did not fulfill their total commitment (example: and event booked for 200 people but only 150 attended. Penalty is charged for 50 non-attendees.)
Other guests charges		
Local telephone charges not billed on a per-call basis	Yes	Part of rent for occupancy.
Local telephone charges billed on a per-call basis	Yes	Sale of telephone service by hotel.
Intrastate long distance telephone charges billed on a per-call basis	Yes	Sale of telephone service by hotel.
Interstate or international long distance telephone charges billed on a per-call basis	No	
Internet access	No	
Television services, whether cable, non-cable or satellite, in-room use of movies, videos or other forms of entertainment, including video games, pay-per-view movies, events or other premium programming	Yes	These services are subject to sales tax as part of the charge for occupancy. See page 29.
Parking and related valet services	Yes	
Transportation charges	No	Not enumerated as a taxable service.
Destination charges	No	Not enumerated as a taxable service.
Gift shop		
Retail video rental	Yes	
Retail food sales	Other: There is a	This food exemption is not applicable to

Transaction/item or service sold or purchased	Taxable? Yes/No/Other	Additional comments/explanation, etc.
	general exemption for food, food products, beverages (including coffee, tea and cocoa), dietary foods, and health supplements sold for human consumption.	candy, confections, soft drinks, alcoholic beverages, fruit drinks that contain less than 70% fruit juice, sandwiches and heated foods. See Publication 880, <i>Taxable and Exempt Foods and Beverages Sold at Retail Food Markets and Similar Establishments</i> .
Nonprescription drugs, such as, for example, aspirin, cold medicine, sinus medication, etc.	No	See Publication 840, <i>A Guide to Sales Tax For Drugstores and Pharmacies</i> and section 528.4 of the Sales and Use Tax Regulations for further information on the exemption from sales tax for drugs and medicines
Retail candy	Yes	
Retail beer/wine sales	Yes	
Retail clothing	Other: There is an exemption from the state sales tax for clothing and footwear and items used to repair exempt clothing sold for less than \$110.	The exemption for sales of clothing for less than \$110 does not apply to any locally imposed sales tax unless the locality elected to provide the exemption.
Retail non-food sales (e.g., toothpaste, baby wipes, pens)	Yes	
Newspapers and periodicals	No	
Miscellaneous fees (golf, tennis, swimming, etc.)-purchased separately from hotel occupancy and optional (occupancy can be purchased separately without these fees)		
Court usage	No	
Lessons	No	
Greens fees	No	
Commissions paid to hotel by outside providers	No	
Resort fees	Other: If one lump sum is paid and taxable and exempt items are not separately stated, entire charge is taxable. If taxable and exempt	These are for a number of additional amenities provided by a resort, such as beach chairs, bottled water in the hotel room, access to fitness center, newspaper delivery, shuttle service, etc.

Transaction/item or service sold or purchased	Taxable? Yes/No/Other	Additional comments/explanation, etc.
	items are separately stated, tax is due only on the taxable goods and services e.g., rental of beach chairs, sale of bottled water	
Health spa and salon-purchased separately from hotel occupancy and optional (occupancy can be purchased separately without these fees)		
Spa usage fees	No	Subject to local sales tax imposed in New York City.
Massage revenue-performed in spa, guest room or off site	No	Subject to local sales tax imposed in New York City.
Weight room fees	No	Subject to local sales tax imposed in New York City.
Tanning booth	No	Subject to local sales tax imposed in New York City.
Nutritional counseling	No	Subject to local sales tax imposed in New York City.
Facials/barber/beauty services	No	Subject to local sales tax imposed in New York City.
Miscellaneous sales		
Telephone commissions received from pay phones	No	
Prepaid telephone cards or prepaid calling services	Yes	
Local and intrastate fax charges	Yes	
Interstate and international fax charges	No	
Copy charges	Yes	However, copies sold through coin operated photocopy machines at 50 cents or less are exempt from sales tax.
Equipment rental	Yes	
Vending machine sales	Yes	Note: Food and drink sold for 75 cents or less from vending machines, sales through regular vending machines at 10 cents or less and sales through bulk vending machines at 50 cents or less are exempt from sales tax.
Vending machine commissions (vendor maintains the machine)	No	

Transaction/item or service sold or purchased	Taxable? Yes/No/Other	Additional comments/explanation, etc.
Commissions earned from room service meals provided by leased restaurant	No	
Lease of real property	No	See page 31 for information on other taxes that may be related to the leasing of real property.
Commission on automatic teller machine	No	
Computer usage charges	Yes	Rental of tangible personal property
Shipping/ mailing charges	Yes, if it is a charge by vendor of taxable goods or services.	
Miscellaneous purchases		
Consulting services	Provided that the services are not enumerated as being subject to sales tax and the sale of tangible personal property is not involved-not taxable	
General services	Provided that the services are not enumerated as being subject to sales tax and the sale of tangible personal property is not involved-not taxable	
Janitorial services	Yes	
Professional services	Provided that the services are not enumerated as being subject to sales tax and the sales of tangible personal property is not involved-not taxable	
Landscaping services	Yes	
Cleaning supplies	Yes	
Pool maintenance	Yes	
Security service provided by security company or by off duty police officers	Yes	
Salvage sales if tangible personal property such as furniture, kitchen equipment, etc.	Yes	
Uniforms	Other: There is an exemption from the	The exemption for sales of clothing for less than \$110 does not apply to any

Transaction/item or service sold or purchased	Taxable? Yes/No/Other	Additional comments/explanation, etc.
	state sales tax for clothing and footwear and items used to repair exempt clothing sold for less than \$110.	locally imposed sales tax unless the locality elected to provide the exemption.
Cleaning of uniforms	No	
Maintenance contracts on hotel equipment	Yes	
Freight charges	Yes, if it is a charge by vendor of taxable goods or services.	
Lease of tangible personal property for hotel use	Yes	
Employee drug tests	No	
Employee background tests	Yes, if such tests constitute a taxable protective or detective service.	
Hotel operation purchases		
In room amenities provided with guest room: e.g., shampoo, soap, toilet paper, laundry bag	Yes	
In room coffee provided at no charge to guest	No	
In room cookies provided at no charge to guest	No	
Newspapers provided at no charge to guest	No	
Linens and towels	Yes	
Coffeemakers for in-room guests	Yes	
Flowers (for hotel common areas, display, hotel decorating	Yes	
Operating supplies	Yes	
Food and beverage purchases		
China, glassware and utensils	Yes	
Linens	Yes	
Operating supplies	Yes	
Disposable plates provided with purchased meals	No	
Disposable napkins provided with purchased meals	Yes	
Disposable napkins, plates, etc.,	Yes	

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Transaction/item or service sold or purchased	Taxable? Yes/No/Other	Additional comments/explanation, etc.
provided with complimentary meals		
Capital assets		
Computer hardware	Yes	
Computer software designed specifically for a single hotel and sold to that hotel	No	
Prepackaged canned software	Yes	
Computer software designed specifically for a single hotel which is delivered electronically	No	
Prepackaged canned software that is delivered electronically	Yes	
License to use computer software that is located outside of New York State	Yes	
Furniture and fixtures for hotel	Yes	
Kitchen machinery and equipment	Yes	
Office equipment for hotel	Yes	
Televisions, telephones and other electronics	Yes	
Telephone switching equipment	Other: Yes- unless it is used directly and predominantly in providing telecommunication services for sale	
New construction of real property	No	
Repair of real property	Yes	
Installation of tangible personal property	Yes	Not taxable if end result is a capital improvement.
Repair of tangible personal property	Yes	
Fabrication of tangible personal property	Yes	
Purchase/Sale of entire business **For information on special rules and requirements in the case of the sale of an entire business see Publication 750, <i>A Guide to Sales Tax in New York State</i> and Part 537 of the New York State Sales and Use Tax Regulations		
Real property-land, buildings, other real property	No	
Furniture, fixtures, equipment, and other tangible personal property	Yes	

Notes

Notes

New York State Tax Department

Online Services

**Create an Online Services
account and log in to:**

- make payments
- file certain returns
- view and change account
information

Access is available 24 hours a day, 7 days
a week (except for scheduled maintenance).

www.tax.ny.gov

Need help?



Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Telephone assistance

Business Tax Information Center: (518) 457-5342

To order forms and publications: (518) 457-5431



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

**NYS TAX DEPARTMENT
W A HARRIMAN CAMPUS
ALBANY NY 12227**