

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-04(19)S
Sales Tax
September 2, 2004

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S030905A

On September 12, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from Turf House, Inc./ Holiday Inn - Turf on Wolf Road, 205 Wolf Road, Albany, New York, 12205. Petitioner, Turf House, Inc./ Holiday Inn - Turf on Wolf Road, provided additional information pertaining to the Petition on November 26, 2003.

The issue raised by Petitioner is whether the amounts paid by the Hotel Reward Night point program to Petitioner for Petitioner's provision of hotel occupancy to reward program participants are subject sales tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner participates in InterContinental Hotel Group's point redemption program (Hotel Reward Night program) that is designed to benefit patrons that stay, on a regular basis, at hotels owned, operated, managed or franchised by InterContinental Hotels Group (IHG). IHG is a separate and distinct company that owns various hotel chains, including Holiday Inns. The Hotel Reward Night program provides patrons who wish to participate in the program with reward points when they stay at one of the IHG hotels. Accumulated points are exchanged for coupons good for lodging at IHG hotels. The reward points have no dollar value to the patron who receives and accumulates them. The patron cannot resell the reward points on the open market, nor can the reward points be exchanged for money. The reward points are non-transferable to other parties or individuals, with the exception of individuals living in the same household as the patron who has accumulated the reward points.

The Hotel Reward Night program is part of IHG. Petitioner is a corporation separate and distinct from IHG. It has entered into a franchise agreement with IHG and is required to participate in the rewards point program by terms of its agreement with IHG. Petitioner, on a monthly basis, is billed and pays to IHG a small percentage of its room revenues derived from the patrons who participate in the Hotel Reward Night program. Thus, when a patron earns points from a stay at Petitioner's hotel, Petitioner will remit a small percentage of the room rate to IHG. Petitioner accounts for this payment as an expense which it describes as a "frequent stay expense."

Once a patron has accumulated enough reward points to redeem an occupancy, IHG mails a coupon to the patron who is the rewards points recipient. The coupon instructs the program participant to contact IHG to arrange for accommodations at Petitioner's hotel (or any other IHG hotel) at no charge to the participant. When a participant wishes to redeem a coupon by staying at Petitioner's hotel, the participant contacts IHG and IHG, in turn, contacts Petitioner to make the desired reservation for the participant. Upon arrival at Petitioner's hotel, the participant presents the coupon to Petitioner for redemption and receives an occupancy at no charge to the participant

either by Petitioner or IHG. Petitioner is paid by IHG on a monthly basis under the Hotel Reward Night program. The amount paid by IHG to Petitioner is computed using a formula based on Petitioner's standard charges for room rentals. However, the agreed amount is not the amount that Petitioner would normally charge a member of the public for the room. In lieu of receipt of payment by check, Petitioner may be credited the amount of the payment against its liability for its monthly payment to IHG derived from the patrons who participate in the Hotel Reward Night program by staying at Petitioner's hotel. The payment received from IHG when participants in the Hotel Reward Night program use their earned points to stay at Petitioner's hotel is revenue which is accounted for by Petitioner as "room revenue."

Applicable law and regulations

Section 1101 of the Tax Law provides, in part:

(a) When used in this article 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.

* * *

(c) When used in this article for the purposes of the tax imposed under subdivision (e) of section eleven hundred five, the following terms shall mean:

* * *

(6) Rent. The consideration received for occupancy valued in money, whether received in money or otherwise.

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax . . . upon:

(e) The rent for every occupancy of a room or rooms in a hotel in this state, except that the tax shall not be imposed upon (1) a permanent resident, or (2) where the rent is not more than at the rate of two dollars per day.

Section 527.9 of the Sales and Use Tax Regulations provides, in part:

Hotel occupancy. (a) Imposition. A sales tax is imposed on every occupancy of any room or rooms in a hotel, motel or similar establishment at the combined statewide and local

sales tax rate in effect at the situs of such establishment, except that the tax shall not apply to (1) the charges for occupancy by a permanent resident, or (2) where the charge is \$2 or less per day.

* * *

(f) Complimentary accommodations. (1) When a hotel furnishes complimentary accommodations to individuals, for which there is no consideration paid and no rental charged, the hotel need not collect the tax on the normal cost of the room.

Opinion

Petitioner is required by its franchiser (IHG) to participate in IHG's Hotel Reward Night program. IHG is a separate entity from Petitioner. As a participating hotel, Petitioner is required to make payments to IHG pursuant to the Hotel Reward Night program. Petitioner has agreed to accept certain payments from IHG under the Hotel Reward Night program for occupancy it provides under the program when individuals participating in the program decide to use their program points by staying at Petitioner's hotel. Petitioner is paid by IHG on a monthly basis for the occupancy provided to participants under the Hotel Reward Night program. The amount paid by IHG to Petitioner is computed using a formula based on Petitioner's standard charges for room rentals. However, the agreed amount is not the amount that Petitioner would normally charge a member of the public for the room.

The participant informs IHG that he or she wishes to use the reward points. IHG makes the reservation for the participant with Petitioner. The participant may or may not have previously been a guest of Petitioner's hotel. The participants who earned some or all of their program points from stays with Petitioner can choose to use their reward points at Petitioner's hotel or at any of the other hotels participating in the program. Similarly a participant who earned reward points by staying at other participating hotels could choose to use their reward points at Petitioner's hotel.

Section 1101(c)(6) of the Tax Law defines the term "rent" as "The consideration *received* for occupancy valued in money, whether received in money or otherwise." (Emphasis added.) Section 527.9(f) of the Sales and Use Tax Regulations describes complimentary accommodations as accommodations "for which there is no consideration *paid* and no rental *charged*." (Emphasis added.)

In the present case, Petitioner receives consideration from its franchiser, IHG, for the occupancy provided by Petitioner for guests participating in IHG's Hotel Reward Night point redemption program. The rent for such occupancy need not be charged directly to the hotel guest in order to be subject to tax. Accordingly, Petitioner is required to collect the sales tax imposed by

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section 1105(e) of the Tax Law from IHG on the amount of consideration received from IHG for such occupancy.

DATED: September 2, 2004

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