

**BROOME COUNTY  
DEPARTMENT OF  
AUDIT AND CONTROL**

**HOTEL/MOTEL OCCUPANCY TAX COMPLIANCE  
AUDIT**

**November 2007**

*Alex J. McLaughlin, Comptroller*

November 8, 2007

Barbara J. Fiala, County Executive:

The Department of Audit and Control has audited the Hotel/Motel Occupancy Tax returns of five establishments for the period December 1, 2006 through February 28, 2007. The principal objective was to verify that the tax on the occupancy of hotel or motel rooms was collected, reported and remitted to the Commissioner of Finance in accordance with Article III of the Regulatory Local Laws section of the Broome County Charter and Code.

The audit was conducted in accordance with generally accepted auditing standards. Such standards require that the Department of Audit and Control plan and perform the audit to adequately assess the accuracy of the financial records and adequacy of the internal controls, and that we examine, on a test basis, sufficient, competent and relevant evidence to afford a reasonable basis for our conclusions.

Based on the results of our examination, except for the instances noted herein, it is our opinion that the Hotels, Motels and other reporting establishments (bed and breakfasts, etc...) are adequately reporting and remitting occupancy tax to Broome County.

Sincerely,

Alex J. McLaughlin  
Comptroller

cc: Mark R. Whalen, Chairman of the Legislature  
Members of the Legislature  
Eric S. Denk, Clerk of the Legislature  
Christopher H. Marion, Legislative Assistant  
All Reporting Hotels and Motels

## **Background Information:**

The intent of the Hotel/Motel Occupancy Tax is to provide funds for the promotion of Broome County and its city, towns and villages in order to increase convention, trade show and tourist business in the county.

The purpose of the Hotel/Motel Occupancy Tax Compliance Audit is to obtain reasonable assurance that the tax on the occupancy of the hotel and motel rooms is being collected, reported and remitted to the Commissioner of Finance in accordance with Article III of the Regulatory Local Laws section of the Broome County Charter and Code.

The amount of Hotel/Motel Occupancy Tax budgeted for 2007 is \$780,000. So far this year (through September) \$ 819,015 has been remitted to Broome County. We reviewed the period December 1, 2006 through February 28, 2007 in detail. Receipts for the quarter were \$153,577.59.

In preparation for our Audit, we reviewed the applicable laws governing taxes on the occupancy of hotel and motel rooms. We obtained and reviewed a listing of hotels and motels and other reporting establishments (bed and breakfast, etc...) located within Broome County. We obtained and reviewed all occupancy tax returns submitted for the quarter ending February 28, 2007. We also requested and reviewed written policies and procedures used by the Finance Department to administer and collect the tax.

From our list of hotels, motels and other reporting establishments we judgmentally selected five establishments to visit. At the selected establishments, we sampled invoices for rental charges, verified the tax exempt status of guests that were not charged the tax and reviewed applicable records (sales journals, general ledgers, etc...) used to prepare the occupancy tax returns. We also compared taxable room revenue used to calculate occupancy tax due to taxable revenues reported to New York State (sales tax returns).

We also followed up on the status of the delinquent occupancy taxes owed by the Grand Royale Hotel which is owned by Binghamton Associates, LLC. In our Hotel/Motel Occupancy Tax Audit issued in November of 2006, we estimated taxes due plus interest and penalties to be in excess of \$125,000. At that time, we recommended that increased attention be given to this matter.

Since our November 2006 audit report:

Broome County has filed a judgment against Binghamton Associates, LLC on June 4, 2007 and the County has received payment of \$122,188.

However, Binghamton Associates, LLC has not filed occupancy tax returns for the periods December 1, 2006 through February 28, 2007 and March 1, 2007 through May 31, 2007. The Department of Finance has kept the Law Department up to date regarding the Grand Royal Hotel's delinquent status.

Finally, we thank the Hampton Inn, Binghamton Courtyard, Del Motel, Red Roof Inn and South View Farm Bed and Breakfast for their cooperation during our audit.

**Prior Audits:**

The Department of Audit and Control has previously audited the Hotel/Motel Occupancy Tax in 1996, 1998 and 2006.

**AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES**

**-DEPARTMENT OF FINANCE-**

**FINDING 1: REFUND NOT GIVEN FOR OVERPAYMENT OF OCCUPANCY TAX**

During the course of our audit, we noted that an establishment had calculated their tax due incorrectly and overpaid the Commissioner of Finance \$125.68 for the period of December 2006-February 2007. As of July 2007 a refund was not given.

According to the Finance Department's policies and procedures relating to the Occupancy Tax, "If there is an overpayment, a check is generated to the establishment to refund the difference."

Failure to follow established written procedures could result in tasks being executed incorrectly, inefficiently or counter to management's intentions.

**RECOMMENDATION:**

We recommend that the Finance Department amend their policies and procedures to issue a credit for the overpayment rather than issue a check the refund due. We also recommend that the Finance Department issue the credit for \$125.68 to the establishment as soon as possible.

**MANAGEMENT RESPONSE:**

The CPA firm which completed the tax remittance form for the establishment was contacted and asked to explain the discrepancy between the payment and the return. Their research indicated that the payment was for the correct amount and that the return was filled out incorrectly. The County has been provided with an amended return for the quarter ending on February 28<sup>th</sup>, 2007. No refund is necessary.

To remove the necessity of refunding overpayments the procedure will be amended as follows:

1. In the event of an overpayment, the individual responsible for keeping the records shall contact the establishment in order to determine why the payment does not reconcile with the filed tax return.
  - a. If the return is in error, an amended return shall be requested.
  - b. If the amount of payment is in error, a letter shall be sent to the establishment informing them that a credit shall be applied toward their next quarterly remittance.

**AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES**

**-DEL MOTEL-**

**FINDING 1: DEL MOTEL DOES NOT MAINTAIN ADEQUATE RECORDS OF NONTAXABLE RENTAL CHARGES FOR PERMANENT RESIDENTS**

During our examination, we were unable to verify the total amount of \$2,956 for non-taxable income from permanent residents reported on the Return of Tax on Occupancy of Hotel Rooms for the Del Motel. The unsupported non-taxable amount equals \$1,531 with calculated occupancy tax thereon of \$45.93.

Article III of the Regulatory Local Laws section of the Broome County Charter and Code, § 185-10 states, “On and after the first day of January 1978, there is hereby imposed and there shall be paid a tax of 3% upon the rent for every occupancy of a room or rooms in a hotel or motel in this county, except that the tax shall not be imposed upon a permanent resident...”. § 185-9, “Any occupant of any room or rooms in a hotel or motel who maintains occupancy for at least 30 consecutive days shall be considered a “permanent resident” with regard to the period of such occupancy.” § 185-15 states, “For the purpose of the proper administration of this Article and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator...”

Without proper documentation, there is no proof that occupancy should have been non-taxable. Some occupants who should be taxed may be treated as exempt resulting in an understatement of taxable income and underpayment of occupancy tax to Broome County.

**RECOMMENDATION:**

We recommend that the Del Motel begin recording non-taxable rental charges separately from taxable rental charges in their general ledger and that adequate documentation be maintained to facilitate verification. We also recommend that the Del Motel should remit to the Commissioner of Finance \$45.93, the amount of tax due on the undocumented portion of reported income associated with rentals to permanent residents on the December 1, 2006 to February 28, 2007 return.

**MANAGEMENT RESPONSE:**

The Del Motel was provided an opportunity to respond, but declined.

**AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES**

**-DEL MOTEL-**

**FINDING 2: OCCUPANCY TAX CHARGE NOT STATED SEPARATELY**

For the period reviewed, we observed numerous instances where the Del Motel's receipts did not separate the occupancy tax from the room charges.

The Broome County Charter, Article III §185-15 paragraph B states, "The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof at the time when the occupancy is arranged or contracted for and charged for and upon every evidence of occupancy or any bill or statement or charge made for said occupancy issued or delivered by the operator..."

**RECOMMENDATION:**

We recommend that the Del Motel show Broome County occupancy tax as a separate charge on all receipts.

**MANAGEMENT RESPONSE:**

The Del Motel was provided an opportunity to respond, but declined.

**AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES**

**-DEL MOTEL-**

**FINDING 3: CERTIFICATE OF AUTHORITY NOT PROPERLY DISPLAYED AT**

## **DEL MOTEL**

During our examination, we noted that the Del Motel did not properly display their certificate of authority to collect occupancy tax.

Article III of the Regulatory Local Laws of the Broome County Charter and Code, § 185-14 states: “The Commissioner of Finance shall, within five days after such registration, issue without charge to each operator a certificate of authority empowering such operator to collect the tax from the occupant...” “...Such certificates of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy.”

Failure to display certificate of authority may cause occupants to question whether the collection of tax is authorized.

### **RECOMMENDATION:**

We recommend that the Del Motel prominently display a certificate of authority in accordance with Article III of the Broome County Charter.

### **MANAGEMENT RESPONSE:**

The Del Motel was provided an opportunity to respond, but declined.

## **AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES**

### **-BINGHAMTON COURTYARD-**

#### **FINDING 1: CERTIFICATE OF AUTHORITY NOT PROPERLY DISPLAYED AT BINGHAMTON COURTYARD**

During our examination, we noted that the Binghamton Courtyard did not properly display their certificate of authority to collect occupancy tax.

Article III of the Regulatory Local Laws of the Broome County Charter and Code, § 185-14 states, “The Commissioner of Finance shall, within five days after such registration, issue without charge to each operator a certificate of authority empowering such operator to collect the tax from the occupant...” “...Such certificates of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy.”

Failure to display certificate of authority may cause occupants to question whether the collection of tax is authorized.

**RECOMMENDATION:**

We recommend that the Binghamton Courtyard prominently display a certificate of authority in accordance with Article III of the Broome County Charter.

**MANAGEMENT RESPONSE:**

The Binghamton Courtyard was provided an opportunity to respond, but declined.

**AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES**

**-RED ROOF INN-**

**FINDING 1: CERTIFICATE OF AUTHORITY NOT PROPERLY DISPLAYED AT RED ROOF INN**

During our examination, we noted that the Red Roof Inn did not properly display their certificate of authority to collect occupancy tax.

Article III of the Regulatory Local Laws of the Broome County Charter and Code, § 185-14 states, “The Commissioner of Finance shall, within five days after such registration, issue without charge to each operator a certificate of authority empowering such operator to collect the tax from the occupant...” “...Such certificates of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy.”

Failure to display certificate of authority may cause occupants to question whether the collection of tax is authorized.

**RECOMMENDATION:**

We recommend that the Red Roof Inn prominently display a certificate of authority in accordance with Article III of the Broome County Charter.

**MANAGEMENT RESPONSE:**

Upon completion of the audit I contacted the Finance department and was re-issued a copy of our county tax certificate of authority to display in our lobby. Our company changed ownership on September 7, 2007 and the county has since sent an updated certificate that I have on display.