

**BROOME COUNTY
DEPARTMENT OF
AUDIT AND CONTROL**

**HOTEL/MOTEL OCCUPANCY TAX COMPLIANCE
AUDIT**

November 2006

Alex J. McLaughlin, Comptroller

November 30, 2006

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 March 1, 2006 through May 31, 2006. 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: Daniel A Schofield, Chairman of the Legislature
Members of the Legislature
Louis P. Augostini, Clerk of the Legislature
Jerome Z. Knebel, Commissioner of Finance
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 2006 is \$800,000. So far this year (through September) \$643,512 has been remitted to Broome County. We reviewed the period March 1, 2006 through May 31, 2006 in detail. Receipts for the quarter were \$210,706.79.

In preparation for our Audit, we reviewed the applicable laws governing 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 May 31, 2006. 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 thank the Holiday Inn Arena, Kings Inn, Howard Johnson Express, Super 8 Motel Binghamton and the West Branch Angler and Sportsman's Resort for their cooperation during our audit.

Prior Audits:

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

AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES

-FINANCE DEPARTMENT-

FINDING 1: FINANCE DEPARTMENT ACCEPTED INCORRECTLY CALCULATED RETURN

During the course of our audit we reviewed all Returns of Tax on Occupancy of Hotel Rooms; we found that the Kirkwood Motel incorrectly calculated their Net Taxable Income resulting in a small overpayment of occupancy tax. The Finance Department accepted the incorrect return and deposited the check.

Article III § 185-17 of the Broome County charter states, “If a return required by this article is not filed, or a return when filed is incorrect or insufficient on its face, the Commissioner of Finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.”

The Finance Department does not have a procedure in place to verify the math accuracy on the Returns of Tax on Occupancy of Hotel Rooms.

The Finance Department could be accepting inaccurate Returns that may include underpayments to Broome County.

RECOMMENDATION:

We recommend that when the Finance Department receives the Returns from the establishments that it recalculates the Return to make sure it is done accurately to prevent over/under payments. We also recommend that the Finance Department include this verification process in their written procedures.

MANAGEMENT RESPONSE:

It is the normal policy of this office to verify amounts on the Occupancy Tax returns. If there is an overpayment a check is generated to the establishment to refund the difference. If the check is lower than the total amount owed, a letter is sent to the establishment stating that the tax is not considered paid until the remaining amount is received. This miscalculation was not detected. The written procedures will be updated to include the verification of all occupancy tax returns.

**FINDING 2: FAILURE TO COLLECT DELINQUENT OCCUPANCY TAX,
PENALTIES AND INTEREST FROM SANDHILL HOTEL**

During the course of our audit we discovered that the Sandhill Hotel, owned by Binghamton Associates, is delinquent in remitting occupancy tax, penalties and interest from the period 3/1/00 to the current period. They have also failed to file returns since April of 2002. The Sandhill Hotel changed its name in June of 2004 to the Grand Royale Hotel under the same ownership. In August 2004 Grand Royale paid \$5,717.39, which was the amount of taxes due 9/20/00.

The Finance Department has not been determining the taxes due from the hotel operator for the periods for which a return was not filed. The Finance Department did notify the hotel several times of their delinquency, but has not done so since June 2002.

The Broome County Charter and Code, Regulatory Local Laws, Article III § 185-19 states, "If a return required by this Article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the Commissioner of Finance from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices...".

The Article also provides measures for recovering tax. §185-24 states that, "Whenever any operator...shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this Article..., the County Attorney shall, upon the request of the Commissioner of Finance, bring or cause to be brought an action to enforce the payment of the same on behalf of the County of Broome...".

§ 185-27 provides for additional penalties as well. Any operator failing to file a return shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both such fine and imprisonment. Officers of a corporate operator are personally liable for the tax collected or required to be collected by the corporation and are subject to the same penalties.

We have calculated the amount owed to the County from the Sandhill Hotel/Grand Royale, based on estimated taxes due plus interest and penalties, to be over \$125,000. If the tax due has been collected from the occupants but not remitted to the Commissioner of Finance, then the money is being used unlawfully by the hotel operators. Regardless of whether or not the tax has been collected as required by law, the operators are liable for the amount of tax that should have been collected.

RECOMMENDATION:

We recommend that increased attention be given to resolving this matter and that all delinquent occupancy taxes, interest and penalties owed to Broome County be collected as soon as possible. We also recommend that procedures be revised to prevent future breakdowns in communication with delinquent operators.

MANAGEMENT RESPONSE:

A letter has been sent to the County Attorney summarizing the history of this situation. Several delinquency letters were sent to the Hotel with the County Attorney copied. These memos stated that if the Finance Department was not contacted within 10 days legal action would be forthcoming. Quarterly returns have been consistently sent by this office with no response from the establishment. This office and the Law Department are taking actions to collect amounts due to the County.

FINDING 3: FINANCE DEPARTMENT DOES NOT HAVE A COMPLETE LIST OF ESTABLISHMENTS AND IS NOT COLLECTING TAXES FROM ALL OPERATORS

Our review included steps designed to identify all establishments in Broome County that should be collecting and remitting occupancy tax. We compared the resulting list with that maintained by the Finance Department and discovered that one of the establishments that we identified was not on Finance's list.

We contacted the Town House Motel in Endicott and verified that a room could be rented for less than 30 days, rendering said occupancy taxable.

RECOMMENDATION:

We recommend that the Finance Department revise or more effectively apply procedures designed to identify all establishments required to collect and remit occupancy tax. We further recommend that the Finance Department work with the Town House Motel to determine and collect taxes due.

MANAGEMENT RESPONSE:

This office's procedure states that, "In June of each year the Chamber of

Commerce is contacted to request a listing of all hotels, motels and bed and breakfast establishments located within Broome County. The listing from the Chamber of Commerce as well as the telephone directory listing is reviewed to verify that all establishments are registered. If an establishment is discovered which is not registered a Certificate of Registration and a copy of the enabling legislation is sent to it.” The Town House Motel in Endicott was overlooked. The establishment will be contacted and a Certificate of Registration will be sent. Taxes due will be determined and collected. The procedure to identify all establishments in Broome County that should be collecting occupancy tax will be adhered to in the future and performed on a quarterly basis.

FINDING 4: REQUIREMENTS FOR REGISTRATION OF ESTABLISHMENTS AND ISSUANCE, DISPLAY AND SURRENDER OF CERTIFICATES OF AUTHORITY TO COLLECT TAXES ARE NOT BEING ADHERED TO

During the course of our examination, we found that several establishments have submitted Certificates of Registration that are dated months after they opened for business. In addition, there were numerous instances where operators failed to surrender their certificates of authority upon closing, selling or transferring ownership of the hotel or motel. We also discovered an instance where the certificate of authority on file did not reflect the hotel’s current name and another instance in which there was no evidence of a certificate of registration filed by the hotel or motel operator, or of a certificate of authority to collect occupancy tax issued by the Commissioner of Finance.

In accordance with Article III of the Regulatory Local Laws section of the Broome County Charter and Code § 185-14, within three days after such commencement of opening, every operator shall file with the Commissioner of Finance a certificate of registration. The Commissioner of Finance shall, within 5 days after such registration issue a certificate of authority, empowering such operator to collect the occupancy tax. Each certificate shall state the establishment to which it is applicable. The certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the Commissioner of Finance upon the cessation of business at the hotel or motel named or upon its sale or transfer.

Failure to register an establishment in a timely manner could lead to lost County revenue, as rooms are rented and no taxes are collected or remitted. Failure to surrender the certificate of authority as required allows for potential illegal use of the certificate. Additionally, failing to display a certificate or displaying a certificate under a previous name could cause occupants to believe the collection of tax to be unauthorized.

RECOMMENDATION:

We recommend that the Finance Department undertake corrective measures to ensure that all hotel and motel operators have filed a certificate of registration and possess a valid certificate of authority for collecting occupancy tax and that they display such certificates as required. Each certificate of authority should reflect the correct name of the hotel or motel to which it applies. Moreover, the Finance Department should actively pursue the surrender of all certificates of authority upon the closing, sale or transfer of ownership of a hotel or motel.

MANAGEMENT RESPONSE:

The Finance Department states in its procedures “The operator of a hotel, motel or bed and breakfast must file a Certificate of Registration with the Commissioner of Finance within three days of the commencement of operations. Registration numbers are sequentially assigned.

In the situation where an operator sells, transfers or assigns the operations of a hotel, motel or bed and breakfast establishment he/she must notify the Commissioner of Finance at least 10 days before the change in possession takes place. Upon receiving this notification the Commissioner sends a Certification of Registration to the purchaser/assignee. This form is to be completed and returned within three days of transfer of ownership.

Within five days of receiving the Certificate of Registration a Certificate of Authority to collect the occupancy tax is issued. Certificates of Authority are to be surrendered immediately upon cessation, sale or transfer of business. If not surrendered a notarized letter stating that the Certificate has been lost or destroyed is required. The Certificate of Authority must be prominently displayed at the establishment.”

This office will attempt to establish a methodology to identify the opening or cessation of hotel/motel businesses within the County to ensure compliance with these provisions.

FINDING 5: FINANCE DEPARTMENT SHOULD IMPROVE SEGREGATION OF DUTIES RELATED TO OCCUPANCY TAX RECEIPTS

We noted that the Commissioner of Finance opens the mail and receives the remittance check.

Authorization, custody, recordkeeping and reconciliation functions should all be the responsibility of different employees. In this instance, as the Commissioner has the authority to make adjustments to Occupancy Tax due, the actual receipt of the checks in the mail is an incompatible duty.

Incompatible duties increase the risk that errors and/or irregularities will not be detected or corrected within a timely period by employees in the normal course of performing their duties.

RECOMMENDATION:

We recommend that Occupancy Tax receipts be assigned to an employee in the Finance Department that does not have the authority and/or the responsibility to make adjustments to the amount of Occupancy Tax due.

MANAGEMENT RESPONSE:

We will redesign the process to ensure proper segregation.

FINDING 6: PROCEDURES FOR OCCUPANCY TAX COLLECTION OUTDATED

During the course our audit, we reviewed policies and procedures developed and maintained by the Finance Department. We noted that written policies and procedures indicate the Treasury Manager and Treasury Associate are the only positions responsible for the tasks associated with administering the Occupancy Tax. Our testing revealed that a Treasury Clerk is actually performing most of the tasks related to the occupancy tax collection.

Written policies and procedures provide the guidelines necessary to ensure that the various functions are being performed by the appropriate personnel in the proper manner. Written policies and procedures that are in place should be followed and periodically reviewed and updated to reflect any required changes.

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 follow the written policies and procedures. We also recommend that the Finance Department review their policies and procedures on a regular basis and update them when necessary.

MANAGEMENT RESPONSE:

This office will update the written procedures to reflect the task distribution as it currently exists within the department.

AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES

-KINGS INN-

FINDING 1: KINGS INN USING INCORRECT AMOUNT FOR GROSS INCOME ON OCCUPANCY TAX RETURN

During the course of our audit we found that the Kings Inn is incorrectly calculating occupancy tax on their quarterly return. The Kings Inn is erroneously including sales tax, occupancy tax and income from room rentals in Gross Income on their Occupancy Tax Due Return.

Occupancy tax due should be calculated by using the Gross Income from Occupancy of Rooms, less exemptions, multiplied by 3% (Occupancy Tax). Other amounts, such as sales tax, occupancy tax, telephone charges, food charges, etc..., should not be included in Gross Income from Occupancy of Rooms when calculating the tax due.

Including sales tax and/or occupancy tax charges in the Gross Income overstates the amount of Occupancy Tax due. In this specific case, we found other errors on the return. Had these other conditions not existed, more occupancy tax would have been remitted than was collected.

RECOMMENDATION:

We recommend that the Kings Inn use Gross Income from room charges only when calculating Occupancy Tax due. We also note that if the operator were to compare tax due as calculated on the return to actual amounts collected this type of error could be detected.

MANAGEMENT RESPONSE:

Additional amounts paid due to miscalculations may please be conveyed and reimbursed.

FINDING 2: KINGS INN DOES NOT MAINTAIN REQUIRED DOUMENTATION FOR TAX-EXEMPT RENTAL CHARGES

During our examination, we found that the Kings Inn has granted occupants tax exempt status without first obtaining the required documentation. We were unable to verify the total amount of exempt income because of the missing documentation. The unsupported tax exempt amount equals \$1,321.52, with calculated occupancy tax thereon of \$39.65.

Article III of the Regulatory Local Laws section of the Broome County Charter and Code, § 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..." "...the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a certificate duly executed by an exempt corporation or association certifying that the occupant is its agent, representative or employee, together with a certificate executed by the occupant certifying that his occupancy is paid or to be paid by such exempt corporation or association, and is necessary or required in the course of or in connection with the occupant's duties as a representative of such corporation or association."

Without proper documentation, there is no proof that the occupant was tax exempt. Some occupants who should not be tax exempt may be treated as so, resulting in an understatement of taxable income and underpayment of occupancy tax to Broome County.

RECOMMENDATION:

We recommend that the Kings Inn secure required documentation before allowing rental charges to be exempt from occupancy tax, and that this documentation be retained as part of the accounting records.

We also recommend that Kings Inn remit to the Commissioner of Finance \$39.65, the amount of tax due on the undocumented portion of reported exempt sales on the March 1, 2006 to May 31, 2006 return.

MANAGEMENT RESPONSE:

We did have the tax exempt documents, some of them were provided to the auditors, others could not be found. Now, we are attaching these documents with the daily cash sheet. \$39.65 enclosed.

FINDING 3: KINGS INN DOES NOT MAINTAIN ADEQUATE RECORDS OF NON-TAXABLE RENTAL CHARGES FOR PERMANENT RESIDENTS

During our examination, we were unable to verify the total amount of \$16,118 for

non-taxable income from permanent residents reported on the Return of Tax on Occupancy of Hotel Rooms for the Kings Inn. The unsupported non-taxable amount equals \$8,009, with calculated occupancy tax thereon of \$240.27.

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 Kings Inn 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 Kings Inn should remit to the Commissioner of Finance \$240.27, the amount of tax due on the undocumented portion of reported income associated with rentals to permanent residents on the March 1, 2006 to May 31, 2006 return.

MANAGEMENT RESPONSE:

We do record taxable and non-taxable charges separately on our daily cash sheet. \$ 240.27 enclosed.

Auditor’s Note: Although some attempt is made to distinguish taxable vs. non-taxable transactions on the daily cash sheets, the effort is not consistent and no such records are posted to the Ledger.

FINDING 4: OCCUPANCY TAX COLLECTED DOES NOT EQUAL TAX REMITTED BY KINGS INN

During the course of our audit we discovered that the Kings Inn did not remit the total occupancy tax that they had collected for the March 1st-May 31st 2006 time period. Hotel records that we examined indicate \$2,679.81 was collected, but only \$2,461.58 was remitted.

Article III § 185-18 of the Broome County charter requires operators to pay "... to the Commissioner of Finance the taxes imposed by this Article upon the rents required to be included in such return, as well as other monies collected by the operator acting or purporting to act under the provisions of this Article."

Kings Inn management is not reconciling the amount of tax collected to the amount of tax remitted with their occupancy tax return.

Unpaid balances of occupancy tax collected exceeding amounts calculated on the quarterly tax return indicates occupancy tax collected from guests is not being remitted as required by Article III of the Broome County Charter. Broome County could be losing thousands of dollars each year.

RECOMMENDATION:

We recommend the Kings Inn remit \$218.23 to the Commissioner of Finance for the amount collected but not remitted.

We also recommend that Kings Inn management compare occupancy tax collected to occupancy tax due as calculated on the quarterly tax return. When occupancy tax collected exceeds amount due as calculated on the return, the excess should be properly remitted with the occupancy tax return and remedial action to prevent future such over collections should be implemented by hotel management.

MANAGEMENT RESPONSE:

We believe the auditors did not consider the taxable refunds given to customers who check out earlier and claim refunds. Errors cannot be ruled out but a discrepancy to the tune of \$218.23 between tax collected and remitted is enormous. The amount is enclosed but we request review of this matter.

Auditor's Note: We calculated the total tax collected by adding up all of the daily cash sheets. The daily cash sheets take into consideration any refunds issued in a particular day. Further review is neither warranted nor forthcoming.

AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES

-HOWARD JOHNSON EXPRESS-

**FINDING 1: CERTIFICATE OF AUTHORITY NOT PROPERLY DISPLAYED AT
HOWARD JOHNSON EXPRESS**

During our examination, we noted that the Howard Johnson Express 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 Howard Johnson Express prominently display a certificate of authority in accordance with Article III of the Broome County Charter.

MANAGEMENT RESPONSE:

-No Response Received-

FINDING 2: HOWARD JOHNSON EXPRESS CHARGING 8.25% NEW YORK STATE SALES TAX

During our examination, we became aware of the fact that Howard Johnson Express is collecting 8.25% sales tax (4.25% for NYS and 4% for Broome County) from their occupants, but only remitting 8% (the current rate) on their New York State Sales Tax returns.

The New York State Department of Taxation and Finance Important Notice N-05-8, released in April 2005, states that as of June 1, 2005 the state sales and use tax

rate is decreased to 4%. Section (g) Hotel occupancy-Report all taxable daily rentals occurring on or after June 1, 2005 at the new rates.

The Hotel operator failed to update his computer system to reflect the new tax percentage. The operator also failed to compare the tax collected with the tax calculated as due on his return.

This operator has been overcharging occupants and underpaying New York State for over a year.

RECOMMENDATION:

We recommend that Howard Johnson Express amend their New York State Sales Tax returns since June 1, 2005 to reflect the actual 8.25% of sales tax that it collected and remit the amount due to the State. We also recommend that the Motel update its computer system to ensure that only proper taxes are charged.

MANAGEMENT RESPONSE:

-No Response Received-

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AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES

-SUPER 8 MOTEL-

FINDING 1: SUPER 8 MOTEL CHARGING 8.25% NEW YORK STATE SALES TAX

During our examination, we became aware of the fact that Super 8 Motel was collecting 8.25% sales tax (4.25% for NYS and 4% for Broome County) from their occupants, but only remitting 8% (the current rate) on their New York State Sales Tax returns.

The New York State Department of Taxation and Finance Important Notice N-05-8, released in April 2005, states that as of June 1, 2005 the state sales and use tax rate is decreased to 4%. Section (g) Hotel occupancy-Report all taxable daily rentals occurring on or after June 1, 2005 at the new rates.

The motel operator failed to update his computer system to reflect the new tax percentage. The operator also failed to compare the tax collected with the tax calculated as due on his motel's return.

This operator has been overcharging occupants and underpaying New York State for over a year.

RECOMMENDATION:

We recommend that the Super 8 Motel amend its New York State Sales Tax returns since June 1, 2005 to reflect the actual 8.25% of sales tax that it collected and remit the amount due to the State. We also recommend that the Motel update its computer system to ensure that only proper taxes are charged.

MANAGEMENT RESPONSE:

-No Response Received-

AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES

-WEST BRANCH ANGLER-

FINDING 1: CERTIFICATE OF AUTHORITY NOT PROPERLY DISPLAYED AT WEST BRANCH ANGLER AND SPORTSMAN'S RESORT

During our examination, we noted that the West Branch Angler and Sportsman's Resort 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 West Branch Angler and Sportsman’s Resort prominently display a certificate of authority in accordance with Article III of the Broome County Charter.

MANAGEMENT RESPONSE:

-No Response Received-

AUDIT FINDINGS, RECOMMENDATIONS AND RESPONSES

-HOLIDAY INN ARENA-

FINDING 1: CERTIFICATE OF AUTHORITY NOT PROPERLY DISPLAYED AT HOLIDAY INN ARENA

During our examination, we noted that the Holiday Inn Arena 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 Holiday Inn Arena prominently display a certificate of authority in accordance with Article III of the Broome County Charter.

MANAGEMENT RESPONSE:

A certificate has been requested.

FINDING 2: TAX EXEMPTION FOR PERMANENT RESIDENTS NOT BEING PROPERLY APPLIED

During the course of our Audit, it came to our attention that airlines rent blocks of rooms for flight crews to use on an ongoing basis. The Holiday Inn Arena charges the airlines occupancy tax on the first 90 days of each such extended use arrangement. Rentals for periods in excess of 30 consecutive days are exempt.

Article III of the Broome County Charter provides relief from Occupancy Tax for permanent residents. § 185-10 states “...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 or exempt organizations as herein set forth.” A permanent resident is defined in Article III § 185-9 of the Broome County Charter as, “Any

occupant of any room or rooms in a hotel or motel who maintains occupancy for at least 30 consecutive days...” An occupant is defined as “a person who, for consideration, uses, possesses or has the right to use or possess any room in a hotel or motel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.” A person is defined as including, among other things, a corporation.

Presently, the Hotel is collecting more occupancy taxes from the airlines than they are legally obligated to pay.

RECOMMENDATION:

We recommend the Holiday Inn Arena not impose occupancy tax on qualifying companies or individuals after thirty (30) consecutive days, as provided for in the law.

MANAGEMENT RESPONSE:

Effective January 1, 2007, occupancy taxes will not be charged after 30 consecutive days of occupancy.