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Erie County Hotel Monitoring Program
Best Western Inn on the Avenue
December 1, 2020 through August 31, 2024

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Erie County Legislature
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Dear Honorable Members:

In 2024, the Erie County Comptroller's Office, Division of Accounting, initiated a regular Monitoring Program of hotel establishments regulated under Erie County Local Law (ECLL) 1-2024, formally known as the Erie County Occupancy Tax Modernization Act. Pursuant to recommendations by the 2006 Erie County Charter Revision Commission, which subsequently became law, authority for enforcing the collection of the County's hotel occupancy tax is administered by the Division of Accounting within the Comptroller's Office.

The 2024 local law represents an updated version of a series of local laws first passed in 1974, the year after New York State formally authorized the County to implement such a tax. Since its inception, the law has authorized the imposition of a tax on guests staying at hotel establishments located in Erie County. The amount of the tax ranges from 3% to 5%, depending on the number of rooms available for rent. During the normal course of business, hotels are required to collect the tax from guests and remit totals to the Comptroller's Office each quarter. Erie County reinvests occupancy tax revenues, which are typically ranging from $10,000,000 to $15,000,000 annually, in the tourism economy of Erie County.

The relationship between the County and hotels is a trust relationship. The law imposes no tax or other costs on the hotels. Because the County would never be able to personally collect tax from each hotel guest at point of sale, the law requires the hotels to collect the tax on the County's behalf and to remit the tax to the County with a tax return form on a quarterly basis. Hotels are well equipped to satisfy this obligation because the process and the infrastructure to carry it out is virtually identical to that of New York State sales tax collection. Because the tax dollars collected by hotels are fiduciary amounts and are at no point considered property of the hotel, occupancy tax should be held in a separate account and should not be comingled with any hotel funds.

Objective

The objective of the Hotel Monitoring Program is to verify that the revenue reported by hotels on their quarterly tax returns and the revenue therefore transmitted to the County are accurate, that recipients are eligible for exemptions received, and to promote general compliance with the provisions of the local law.

Scope and Methodology

There are approximately 180 hotels and many more short-term rental operators in Erie County. While the order in which hotels will be reviewed is generated at random, each entity subject to the local law will be reviewed. Reviews will be conducted by Comptroller's Office staff. Because hotels are private entities operating in a competitive marketplace, and in order to comply with the confidentiality provisions of the law, this report does not include certain information relating to the conclusions contained herein. For the same reason, any specific recommendations and financial information may be contained in a separate document that will be shared and discussed with the entity reviewed. Furthermore, the public release of any information contained in this report is in full compliance with applicable local, state, and federal privacy and disclosure laws.

Local Law

The Erie County Occupancy Tax Modernization Act became effective in January 2024. The primary purpose of updating the local law – which had not been substantively updated since the 1970s – was to ensure that all short-term rentals providing hospitality and accommodations, such as premises booked through platforms such as AirBnb and VRBO, were treated the same as traditional hotels and motels that provide the same type of service. Other purposes included a modernization of the administration and enforcement tools available to the Comptroller, introducing provisions designed to fill gaps in previous versions of the legislation, and updating language for clarity.

For the purposes of the Hotel Monitoring Program, it is important to understand that the local law contains two major exemptions from taxation: one which depends exclusively on the status of the guest, and another depending on the duration of the stay. The burden of demonstrating eligibility for the status and duration exemptions is firmly placed upon the operator and requires an affirmative showing pursuant to specific administrative criteria for validity.

The status exemption applies to individuals present on official business of governments, public corporations and certain non-profit entities. The duration exemption applies to individuals who rent a room for a period of 30 consecutive days or longer.

That process as applied to the status exemption requires the hotel guest to provide a copy of a properly executed exemption certificate. There are two official forms, one for public employees and another for non-profit employees demonstrating that the occupant is an agent of the exempt entity. If the guest does not present those documents to the operator, no exemption can be granted. Hotels are required to retain any certificates accepted for a period of five years.

Similarly, an operator claiming a duration exemption would need to provide occupancy records conclusively demonstrating that the guest stayed for at least 30 days without interruption. In other words, if the operator cannot provide appropriate documentation proving the exemption, the stay is taxable and the operator is liable for that amount, even if it was never collected from the guest.

BEST PRACTICES

Over the course of the Monitoring Program, the Division of Accounting has identified several problematic practices. In order to address issues pertaining to hotel entities, certain generally applicable best practices and recommendations are included here where relevant.

Best Western Inn on the Avenue

BACKGROUND

The Best Western Inn on the Avenue (Best Western Delaware or BWD) opened in 1983 under the name of 1205 Delaware Avenue, Inc. BWD first registered with Erie County in 1984; the most recent registration on file is dated March 9, 2022. BWD is a family-owned and operated business. A second-generation member of the family serves as the general manager of the hotel, but the owners continue to maintain a high level of day-to-day involvement in the enterprise.

Available records show that BWD has been audited once before, covering the period from June 2003 through May 2004. The Erie County Commissioner of Finance, then the County's Director of Real Property Tax Services, reported that the information contained in BWD's Certificate of Registration was correct, taxes were stated and charged separately from rents, proper exemption documentation was present and maintained in a separate file, and the entity operated in compliance with record retention requirements. The sole issues found during the audit included a failure to post the Certificate of Authority and a calculation error resulting in an underpayment of $1,274.04.

OBSERVATIONS

The Comptroller's Office conducted field work at BWD over a period of four weeks and examined voluminous records provided by BWD. The scope of the current review by the Comptroller's Office covered the period between December 1, 2020 and June 30, 2024. During the review period, the entity employed between 12 and 16 people, four of whom were involved in daily administration. BWD's bookkeeper is responsible for managing the hotel's finances, including the completion and remission of hotel occupancy tax returns to the County. When a quarterly tax return is completed, one of the owners will review and approve the return prior to submission.

BWD has an electronic property management system (PMS) used primarily for processing transactions, performing routine audits, and generating reports. The PMS used by BWD does not include large-scale electronic record storage; BWD maintains paper records and was able to provide those records to the Comptroller's Office when requested during this review.

BWD generates a series of reports detailing each day's transactions. Daily reports include the night audit report, operator cash out totals, operator transactions, the daily transaction log, room and tax listings, a revenue tax detail report, credit card transactions, and daily detail reports. Each day, reports are combined into a single file and preserved in chronological order. The Comptroller's Office analyzed the entire population of files pertaining to the review period.

CONCLUSIONS

The Comptroller's Office determined that BWD has substantially complied with the Hotel Occupancy Tax Law during the review period. The hotel has properly registered with the Comptroller's Office, possesses and presents a valid Certificate of Authority, and filed each quarterly return prior to the deadline. While the Comptroller's Office discovered some reporting errors, a limited number of improper exemption applications, and various minor inconsistencies between BWD practices and the Hotel Occupancy Tax Law, the Comptroller's Office concluded that these discrepancies stemmed from record keeping errors and misinterpretations of the local law and did not result from intentional wrongdoing.

Conclusion #1: Duration exemptions were given to guests without 30 consecutive days of occupancy.

The Comptroller's Office found that duration exemptions were being granted to hotel guests who did not satisfy the criteria by continuously occupying the room for 30 days. These exemptions appear to have been granted by mistake or were based on a misinterpretation of the local law.

The Comptroller's Office found a number of duration exemptions that resulted from clerical errors. For example, one guest staying at BWD in 2021 was reported as having stayed for over 90 days, however, daily detail reports showed that this guest only stayed for two weeks and should not have been exempted from taxation.

In other instances, exemptions were incorrectly granted for long-term guests whose stay was not continuous. For example, one guest, a travelling nurse, stayed at BWD while completing a three-month assignment at a local hospital. While that guest occupied a room at BWD for more than 30 days over a brief period of time, the guest regularly returned home on weekends and did not pay for the room during time away, resulting in gaps of one to two days between periods of occupancy. Those breaks in the guest's stay disqualified the guest from the duration exemption.

Recommendation: Exemptions

Hotels should have written policies for processing exemptions and those policies should be enforced. Staff should be trained to verify that guests meet the criteria for status and duration exemptions. This includes ensuring that guests are occupying the hotel for 30 continuous days and that guests invoking the status exemption are an agent of the exempt entity and present on official business. Hotel management should conduct regular reconciliations of exemption records with daily detail reports to ensure accuracy. A secondary review process should occur prior to finalizing exemptions to prevent clerical errors. If possible, hotels should seek to configure their property management system (PMS) to flag exemptions which do not meet the requisite criteria.

To ensure compliance with New York State and Erie County laws, hotels should require exemption forms for each transaction and maintain organized records. Guests who claim to be exempt from taxes (i.e. a government or certain non-profit employee traveling on official business) must provide appropriate exemption documentation at check-in or prior to payment. Hotels should conduct periodic reviews of exemption accounts to verify that all entities with recurring tax-exempt transactions have current, valid exemption forms on file. Front desk and accounting staff should be trained to enforce documentation requirements and review exemption eligibility.

By implementing these measures, hotels can reduce errors, ensure compliance with tax regulations, mitigate risk, and prevent potential financial discrepancies.

Conclusion #2: Reservations made through an intermediary were processed incorrectly.

The Comptroller's Office found that taxes collected on reservations made through an intermediary, principally Expedia, were inadvertently retained. Expedia collects New York State sales tax and local occupancy taxes from guests at the time of booking but handles those amounts differently. Expedia will remit sales tax directly to the New York State Department of Taxation and Finance, but will forward occupancy tax to the hotel, leaving the operator responsible for remitting occupancy tax to the County.

According to the hotel, Expedia collects amounts from guests at the time of booking and remits lump sum amounts to BWD in the form of a guest-specific virtual card containing funds collected. On the hotel's end, certain amounts are deducted off the virtual card and directed to the appropriate account by inputting the room charge and checking the appropriate tax exemption box in the PMS system for each specific transaction. If the transaction was correctly entered into the PMS system than both the room charge and hotel occupancy tax were both deducted from the virtual card and recorded in the PMS in the appropriate revenue accounts.

However, it appears the cashiers mistakenly processed Expedia transactions as tax exempt for both sales and occupancy tax. The entity discovered the cashier marked the incorrect box when processing individual transactions in the PMS system. By doing so it left the occupancy tax on the virtual card and recorded the transaction as tax-exempt in their PMS. While BWD did not knowingly withhold occupancy tax from the County, it is clear that oversight related to amounts received from Expedia was lacking. It is unclear whether BWD will be able to retrieve those remaining amounts from the virtual cards. However, during the review, BWD management began the process of verifying any outstanding amounts with Expedia and correcting their records to reflect that hotel occupancy tax was collected. It should be noted that this represents a relatively small number of occurrences and management is correcting the errors.

Recommendation: Intermediaries

Hotels should take steps to fully understand their relationship with intermediaries or room remarketers such as Expedia, Travelocity, and Kayak. Doing so allows hotels to avail themselves of all necessary information and reduces the risk of manual errors. Employees should be trained on proper PMS procedures for handling third-party reservations and related tax exemptions. Monthly reviews should be conducted to verify that third party bookings were processed accurately in the system and that third-party remittances match expected occupancy tax amounts.

Conclusion #3: Tax collected for no-show guests and service charges was not remitted.

During the review, the Comptroller's Office found that BWD collected occupancy tax on no-show reservations and hotel service charges, but did not remit that money to the County. When a customer books a room and, without notifying the hotel, fails to arrive for their scheduled stay, the customer is not refunded. Additionally, other services such as extra bed costs, and pet fees but excluding room service charges are incurred before or during the guest's stay and paid for at check out.

The revenue from no-show and service charges is recorded in a separate report. In calculating total revenue for purposes of the tax return, the preparer would need to add the revenue generated in the separate report to occupancy revenue. According to BWD, the bookkeeper believed that the no-show and service revenue was already included in the occupancy revenue. As a result, the tax was not recorded in general revenue totals or remitted to the County and the hotel retained the tax revenue.

Conclusion #4: Bookkeeping and reporting error overstated exemption totals.

The Comptroller's Office found a specific accounting error relating to how state sales tax and hotel occupancy tax exemptions are posted in the hotel's ledger. In BWD's system, New York State sales tax and Erie County hotel occupancy tax totals are automatically calculated based on the transaction value. At the end of each day, transaction revenue totals are aggregated, reviewed in the night audit report, and confirmed in BWD's Daily Report Detail Listing Summary. The PMS used by BWD maintains a separate total for taxes collected, but the PMS does not communicate with hotel's accounting system. BWD's accounting system is set up to account for both sales tax and occupancy tax in a single general ledger, when there should be a distinct ledger for each tax. Therefore, even though the system properly calculates each tax separately, the totals are comingled in the same ledger account.

The primary accounting task requires the individual completing the form to subtract tax exempt revenue from total revenue and calculate the tax amount from the resulting figure. In BWD's case, the sales tax rate is 8.75% and the occupancy tax rate is 5%. The bookkeeper routinely completes returns using the revenue and tax collection totals generated in a single quarterly report. However, the Comptroller's Office found that because recorded sales tax and occupancy tax numbers are blended throughout the quarter, the bookkeeper was subtracting the total amount of tax-exempt revenue collected from each quarterly return.

The table below compares the proper calculation (Example #1) method to the method used by BWD (Example #2), demonstrating how BWD's accounting error resulted in underreported taxable revenue and underpaid tax obligations. *Please note that the data used in this illustration is hypothetical, and does not include, represent, or reflect any specific values provided by BWD.*

Financial Data			
Total quarterly revenue:	$200,000	Total Sales Tax-Exempt business:	$16,000
		Total Occupancy Tax-Exempt business:	$10,000

Example #1		**Example #2**	
Quarterly Return - accurately calculated:		Quarterly Return - overstating tax- exempt amount	
Total Revenue	$200,000	Total Revenue	$200,000
Total Exempt Occupancy Tax	$ 10,000	Total Exempt Occupancy Tax	$ 26,000
Total Reportable Revenue	$190,000	Total Reportable Revenue	$174,000
Occupancy Tax Revenue (5%)	**$ 9,500**	**Occupancy Tax Revenue (5%)**	**$ 8,700**

This accounting error further indicates that BWD comingles all of the actual revenue it receives in a single account and cuts quarterly tax checks from that account based on the bookkeeper's calculations. If actual tax amounts were segregated from revenue in a separate account, the hotel would have a zero balance in that account at the end of each quarter. Therefore, the bookkeeper would be able to notice the error when the calculated amount did not match the actuals.

Recommendation: Managing Tax Revenues

Collected hotel occupancy tax, which is not the property of hotels, should be segregated from general revenues, which are hotel property. Furthermore, sales tax collections should be held separately from occupancy tax collections. Hotels should maintain separate accounts for general revenue, sales tax, and occupancy tax. Hotels should implement a reconciliation process to align PMS data with the accounting system; the individual who approves the reconciliation should not be the individual who performs the reconciliation. If possible, hotels should seek to configure their PMS to communicate directly with their local accounting system. In total, these steps can reduce the probability of errors or potential wrongdoing.

Hotels should develop written policies to ensure that all taxable revenue is included in the total occupancy revenue calculation. A quarterly reconciliation process should be implemented to cross-check all collected taxes against reported and remitted amounts. Bookkeeping and accounting staff should be trained to properly categorize and report all taxable revenue. A secondary managerial review should be conducted before finalizing tax returns. If possible, hotel accounting systems should be configured to generate a report that automatically integrates miscellaneous taxable revenue, such as no-show fees and taxable service charges into occupancy revenue totals.

Conclusion #5: Exemption forms not available for review.

The Comptroller's Office found that BWD grants tax exemptions to certain repeat business entities without maintaining proper exemption documentation. These exemptions are processed under a "City Ledger" designation in the hotel's system, but the Comptroller's Office was unable to verify the required exemption forms for these transactions.

Because exemption certificates at BWD were not available to review, we cannot make certain definitive findings. However, the lack of periodic reviews suggests that BWD is not independently verifying exemption eligibility before granting tax-exempt status to guests. The hotel has also been applying blanket exemptions, rather than verifying individual eligibility at the time of booking.

Accordingly, we recommend that BWD determine tax exemption eligibility on a per-occupant basis, requiring guests to provide proper documentation at check-in or before payment and maintain the forms for 5 years.

Conclusion

This report is the first in a series of reviews examining the County's hotel properties and their compliance with the Occupancy Tax Modernization Act. In the months and years to come, the Comptroller's Office intends to review other hotel establishments in the County and will issue reports accordingly.

It is important to note that this report does not provide specific details concerning the amount of hotel occupancy tax revenue improperly retained by BWD. That information is being provided to BWD separately, and a hotel tax payment agreement has been developed for BWD to pay the collected taxes due and owing to the County.

The Comptroller's Office, Division of Accounting, Hotel Tax Unit, has developed a payment agreement for BWD to make the required payment of prior collected hotel occupancy taxes, and BWD has agreed to do so.

The various local laws approved between 1974 and 2007 that comprised the hotel occupancy tax administration process, as amalgamated into the Occupancy Tax Modernization Act, specifically provide for, and mandate confidentiality of records and data unless a hotel entity is a repeat scofflaw. We recognize the competing demands of public accountability and transparency against the language of the law and the specific intent of the Erie County Legislature in crafting that portion of the law for business competitiveness and confidentiality.

The staff and ownership of BWD cooperated fully with the Comptroller's Office during this review, and we thank them for their assistance.