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Erie County Hotel Monitoring Program
Broadway Motel
December 2022-November 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. The Hotel Monitoring Program has two components, one in which the Accounting Division will perform comprehensive reviews of individual hotels, and another in which the Accounting Division will conduct targeted reviews of multiple entities based on recent quarterly returns.

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 comprehensively reviewed is generated at random, each entity subject to the

local law will ultimately 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 and that the stay is connected with official business. 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 when relevant to the particular review.

Broadway Motel

BACKGROUND

The Broadway Motel at 3895 Broadway in Cheektowaga opened in August 1999. The motel was registered with Erie County under its current ownership shortly after being purchased by a long-serving manager in August 2024.

Available records show that the Broadway Motel has never been audited before.

OBSERVATIONS

The motel was selected for examination because the operator reported that one-half to two thirds of all revenue they collected was exempt from occupancy taxes over the most recent nine quarters. Based on the size, nature, and historical trends at the motel, the claimed exemptions appeared on their face to be high.

From 2002 through much of 2024, the Broadway Motel was owned by a couple who lived in California. On September 3, 2024, the couple sold the motel to an entity named Pranami LLC. The majority member of the LLC is the same individual who operated the motel on the prior owner's behalf. In 2023 and the first three quarters of 2024, the motel claimed that approximately 50% – and, on occasion, exactly 50% – of its revenue was exempted. When the LLC assumed ownership of the property, that amount increased to approximately two thirds in the last quarter of 2024. Furthermore, the entity claimed that its exemptions were derived from the status exemption, rather than the duration exemption.

Shortly after the announcement letters were sent to the hotels to be reviewed, the operator contacted the Comptroller's Office seeking additional information. The operator was argumentative and did not want to be held responsible for returns which were submitted under previous ownership, even though he was the one who submitted those returns. The following week, the Accounting Division spoke with the operator and the motel's bookkeeper. Initially, the operator told the Accounting Division that he had given all records to the prior owners upon purchase, that the previous owners agreed to assist him in assembling documentation, and that he sent his current records to those individuals, who live in California, so that "everything could be submitted at once". One week later, the Motel's bookkeeper informed the Accounting Division that the previous owners had "left the records behind" and that the operator had subsequently destroyed them. The Motel is required under the law to maintain records for five years supporting all guest stays and supporting documentation relating thereto.

The Motel's representatives became more cooperative over time. The Motel provided handwritten ledgers spanning from August 14, 2024 through February 28, 2025. These ledgers included the date of stay, the ostensible first name given by the guest, the time of check-in, the amount paid at check in, and the room number in which the guest was staying. Larger amounts paid had a "weekly" notation in the righthand margin. None of these columns were labeled, and the Accounting Division asked the Motel's contact person for the headings. The contact stated that it would take a couple of weeks to provide that information. The information was ultimately provided the following week, and the contact informed the Comptroller's representative that the operator had a medical issue and could not be contacted for the next five weeks.

The Comptroller's Office reviewed the documentation received by the Broadway Motel and found that its reported numbers did not align with the totals derived from the source data. For instance, the Broadway Motel reported $36,630 in total revenue during the fourth quarter of 2024, yet its ledger entries for that period totaled $41,180. Due to the entity's purported inability to produce records pertaining to the review period between December 1, 2022 and August 14, 2024, the Comptroller's Office was unable to substantiate any of the exemptions claimed during that period. In addition to understating its gross revenue in the fourth quarter of 2024, the Broadway Motel overstated its exemptions during that period.

CONCLUSIONS

Because the Broadway Motel was unable to substantiate its claimed exemption totals for all but the last two quarters of the review period, the operator is required to pay tax on all revenue that it claimed as exempt pursuant to ECLL 1-2024 § 7(c). Therefore, all its revenue reported from December 1, 2022 to August 14, 2024 is considered taxable. For the final quarter, the Comptroller's Office calculated the amount that should have been paid and added that amount to the total. After subtracting occupancy tax amounts previously paid, it was determined that the Broadway Motel owes a total of $3,901,67 inclusive of penalties and interest.

As it pertains to the entity's books, the Comptroller's Office lacked sufficient information to conclude why the Motel's reported revenue and exemption totals did not match its ledger. At this time, the Comptroller's Office does not believe that the exemption discrepancies were intentional in nature. Rather, it is more likely that the operator misinterpreted the law regarding exemption eligibility. The only information that the Comptroller's Office received regarding exemption determinations was based on room number. According to the motel, specific rooms are rented to long term guests. Without more information, the Comptroller's Office was only able to conclusively determine what the amount of exemptions claimed should be.

It is less clear how the gross revenue discrepancies occurred, but differences are almost certainly attributable to the Broadway Motel's process. The entity receives payments on a daily or weekly basis, marks the entry on a daily stay sheet, and keeps a transaction receipt. Bank deposits are made on a weekly basis using an aggregation of the data recorded on the daily stay sheets. Because of the entity's payment practices, the handwritten nature of their ledgers, rather than using an electronic PMS system, and lack of sufficient detail, it is likely that revenue reporting errors resulted from bookkeeping errors, rather than misrepresentation.

This report is one of 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.

Recommendation: Guest Information

The Comptroller's Office recommends that the Broadway Motel improve its recordkeeping process to collect and maintain adequate guest information. The entity's records only contained the first name of the guest, the amount paid, and the room in which the guest stayed. In order to vindicate the best interests of the entity and the public, each hotel must require each guest, at minimum, to provide his or her first and last name, address, and a copy of a driver's license or other government issued identification.

In addition to general law enforcement considerations, this information is required for legal compliance. Pursuant to § 18(f) of the Hotel Occupancy Tax Modernization Act, an entity must be able to provide "the names and addresses of the occupants" staying at the establishment upon request. Furthermore, in the event of a dispute between the guest and the entity, that information is a necessary prerequisite for the entity to protect its interests.