PART AA

Section 1. Statement of legislative findings and purposes. It is hereby found and declared that New York's Tax Law should be updated to put room remarketers on the same footing as hotel operators for sales tax purposes. In recent years, more and more consumers are booking their hotel rooms through room remarketers and paying them instead of obtaining the hotel room directly from hotel operators. Room remarketers enter into agreements with New York hotel operators to resell rooms through the remarketers' websites and toll-free numbers. The State currently receives no tax on the remarketers' markup on the room, giving remarketers a competitive advantage over hotels using conventional reservation methods. This bill would make clear that the right to "resell" the occupancy, as well as the physical occupancy of a hotel room, are both taxable, thus removing the tax advantage that room remarketers currently have over hotel operators. The bill would also amend New York City's locally-administered hotel room occupancy tax to conform it to the methodology of the State tax in regard to room remarketers.

§ 2. Paragraphs 2, 3, 4 and 6 of subdivision (c) of section 1101 of the tax law, as added by chapter 93 of the laws of 1965, are amended to read as follows:

(2) Occupancy. The use or possession, or the right to the use or possession, of any room in a hotel. **"Right to the use or possession" includes the rights of a room remarketer as described in paragraph eight of this subdivision.**

(3) Occupant. A person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise. **"Right to use or possess" includes the rights of a room remarketer as described in paragraph eight of this subdivision.**

(4) Operator. Any person operating a hotel. **Such term shall include a room remarketer and such room remarketer shall be deemed to operate a hotel, or portion thereof, with respect to which such person has the rights of a room remarketer.**

(6) Rent. The consideration received for occupancy**, including any service or other charge or amount required to be paid as a condition for occupancy,** valued in money, whether received in money or otherwise **and whether received by the operator or a room remarketer or another person on behalf of either of them**.

§ 3. Subdivision (c) of section 1101 of the tax law is amended by adding a new paragraph 8 to read as follows:

(8) Room remarketer. A person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by the room remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such person's

ability or authority to reserve, arrange for, convey, or furnish occupancy, directly or indirectly, and to determine rent therefor, shall be the "rights of a room remarketer". A room remarketer is not a permanent resident with respect to a room for which such person has the rights of a room remarketer.

§ 4. Subdivision (e) of section 1105 of the tax law, as amended by chapter 72 of the laws of 1971, is amended to read as follows:

(e) **(1)** 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)~~] **(i)** a permanent resident, or [~~(2)~~] **(ii)** where the rent is not more than at the rate of two dollars per day.

(2) When occupancy is provided, for a single consideration, with property, services, amusement charges, or any other items, the separate sale of which is not subject to tax under this article, the entire consideration shall be treated as rent subject to tax under paragraph one of this subdivision; provided, however, that where the amount of the rent

for occupancy is stated separately from the price of such property, services, amusement charges, or other items, on any sales slip, invoice, receipt, or other statement given the occupant, and such rent is reasonable in relation to the value of such property, services, amusement charges or other items, only such separately stated rent will be subject to tax under paragraph one of this subdivision.

§ 5. Section 1119 of the tax law is amended by adding a new subdivision (e) to read as follows:

(e) Subject to conditions and limitations provided in this subdivision, a room remarketer shall be allowed a refund or credit against the amount of tax collected and required to be remitted under section eleven hundred thirty-seven of this article in the amount of the tax it paid to an operator of a hotel under section eleven hundred four of this article, where applicable, and subdivision (e) of section eleven hundred five of this article. Provided, however, that, in order to qualify for a refund or credit under this subdivision for any sales tax quarterly period, the room remarketer must, for that quarter, (1) be registered for sales tax purposes under section eleven hundred thirty-four of this article; (2) collect the taxes imposed by section eleven hundred four of this article, where applicable, and subdivision (e) of section eleven hundred five of this article; and (3) furnish the certificate of authority number of the operator to whom the applicant paid the tax in its application for refund or credit if required on that form or upon request. An application for refund or credit under this subdivision must be filed with the commissioner within the time provided by subdivision (a) of section eleven hundred thirty-nine of this article. The application must be in the form prescribed by the commissioner. Where an application for credit has been filed, the applicant may immediately take the credit on the return that is due coincident with or immediately subsequent to the time that the applicant files the application for credit. However, the taking of the credit on the return is deemed to be part of the application for credit. The procedure for granting or denying the applications for refund or credit and review of those determinations shall be as provided in subdivision (e) of section eleven hundred thirty-nine of this article. An operator, including a room remarketer, who is paid tax by a room remarketer must upon request provide the remarketer with its certificate of authority number, provided that the operator's failure to do so does not change the requirement set forth in paragraph three of this subdivision.

§ 6. Subdivisions 2, 3, 4, 7 and 12 of section 11-2501 of the administrative code of the city of New York, subdivision 7 as amended and subdivision 12 as added by local law number 43 of the city of New York for the year 2009, are amended to read as follows:

2. "Operator." Any person operating a hotel in the city of New York, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, [~~mortgage~~] **mortgagee** in possession, licensee or any other person otherwise operating such hotel.

3. "Occupant." A person who, for a consideration, uses, possesses, or has the right to use or possess, any room or rooms in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise. **"Right to use or possess" includes the rights of a room remarketer as described in subdivision twelve of this section.**

4. "Occupancy." The use or possession, or the right to the use or possession of any room or rooms in a hotel, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms. **"Right to the use or possession" includes the rights of a room remarketer as described in subdivision twelve of this section.**

7. "Rent." The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, including any

service [~~and/or booking fees that are~~] **or other charge or amount required to be paid as** a condition [~~of~~] **for** occupancy, and also any amount for which credit is allowed by the operator or room remarketer to the occupant, without any deduction therefrom whatsoever**, whether received by the operator or a room remarketer or another person on behalf of either of them**.

12. "Room remarketer." [~~Any person, excluding the operator, having any right, access, ability or authority, through an internet transaction or any other means whatsoever, to offer, reserve, book, arrange for, remarket, distribute, broker, resell, or facilitate the transfer of rooms the occupancy of which is subject to tax under this chapter.~~] **A person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by such room remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such person's ability or authority to reserve, arrange for, convey, or furnish occupancy, directly or indirectly, and to determine rent therefor, shall be the "rights of a room remarketer". A room remarketer is not a permanent resident with respect to a room for which such person has the rights of a room remarketer.**

§ 7. Subdivisions 13 and 14 of section 11-2501 of the administrative code of the city of New York are REPEALED.

§ 8. Paragraphs 4 and 5 of subdivision a of section 11-2502 of the administrative code of the city of New York, as amended by local law number 43 of the city of New York for the year 2009, are amended to read as follows:

(4) [~~Where the occupancy of a room is reserved, booked or otherwise arranged for by a room remarketer, the tax imposed by paragraph three of this subdivision shall be determined based on the rent received from the occupant by the room remarketer. In such a transaction, the room remarketer shall collect from the occupant and remit to the operator that portion of the tax that is determined based upon the net rent, and the operator shall pay such portion of the tax to the commissioner of finance. The room remarketer shall collect from the occupant and pay to the commissioner of finance that portion of the tax that is determined~~

~~based upon the additional rent.~~] **When occupancy is provided, for a single consideration, with property, services, amusement charges, or any other items, the separate sale of which is not subject to tax under this chapter, the entire consideration shall be treated as rent subject to tax under paragraph one of this subdivision; provided, however, that where the amount of the rent for occupancy is stated separately from the price of such property, services, amusement charges or other items on any sales slip, invoice, receipt, or other statement given the occupant and such rent is reasonable in relation to the value of such property, services, amusement charges, or other items, only such separately stated rent will be subject to tax under paragraph one of this subdivision.**

(5) **A room remarketer shall be allowed a refund or credit against the taxes collected and required to be remitted pursuant to section 11-2505 of this chapter in the amount of the tax it paid to the operator of the hotel or another room remarketer under paragraph three of this subdivision. Provided, however, that in order to qualify for a refund or credit under this paragraph with respect to any quarterly period, as described in subdivision a of section 11-2504 of this chapter, the room remarketer must, with respect to such quarter, (i) be registered for hotel room occupancy tax purposes under section 11-2514 of this chapter, and (ii) collect the taxes imposed by paragraphs two and three of this subdivision. Subject to the conditions and limitations of this paragraph, the provisions of section 11-2507 of this chapter shall apply to refunds or credits under this paragraph.**

(6) Where the rent is paid or charged or billed, or falls due on either a weekly, monthly or other term basis, the daily rent upon which the tax is determined shall be the result obtained by dividing the rent

for such term by the number of days in such term. Where the rent is for more than one room, including but not limited to a suite of rooms, the daily rent per room upon which tax is determined shall be calculated by multiplying the daily rent for the group of rooms by a fraction, the numerator of which shall be the daily rent for the particular room, or a similar room, when such room is rented alone with similar bath facilities, and the denominator of which shall be the total of the daily rent for the individual rooms in the group of rooms, or similar rooms, when such rooms are rented alone with similar bath facilities. In any case in which it is not possible to determine the daily rent per room in the foregoing manner, the commissioner of finance shall prescribe methods for making such determination.

§ 9. Paragraph 2 of subdivision f of section 11-2502 of the administrative code of the city of New York is REPEALED and paragraph 3 of such subdivision is renumbered paragraph 2.

§ 10. Subdivision a of section 11-2507 of the administrative code of the city of New York, as amended by local law number 43 of the city of New York for the year 2009, is amended to read as follows:

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if written application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied by the commissioner of finance, he or she shall state his or her reasons therefor and give notice thereof to the taxpayer in writing. Such application may be made by the occupant, operator, room remarketer or other person who has actually paid the tax [~~or portion of the tax~~] to the commissioner of finance. Such application may also be made by an operator or room remarketer who has collected and

paid over such tax [~~or portion of such tax~~] to the commissioner of finance provided that the application is made within one year of the payment by the occupant to the operator or room remarketer, but no actual refund of moneys shall be made to such operator or room remarketer until he or she shall first establish to the satisfaction of the commissioner of finance, under such regulations as the commissioner of finance may prescribe, that he or she has repaid to the occupant the amount for which the application for refund is made. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

§ 11. Paragraph 1 of subdivision (h) of section 11-2515 of the administrative code of the city of New York, as amended by local law number 43 of the city of New York for the year 2009, is amended to read as follows:

(1) Officers of a corporate operator or room remarketer and partners in a partnership which is an operator or room remarketer shall be personally liable for the tax [~~or portion of such tax~~] collected or required to be collected by such corporation or partnership under this chapter, and subject to the penalties and interest imposed by this section.

§ 12. This act shall take effect September 1, 2010 and shall apply in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law.