

Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program

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Background

The Sale of Discounted Hotel Rooms Over the Internet

The booking of discounted hotel rooms over the Internet by such organizations as Priceline.com and Expedia.com has skyrocketed over the past several years. Internet intermediaries contract to pay discounted rates to hotels for rooms that are then sold over the Internet to the intermediaries' customers at higher prices. Under current practices, state and local sales tax and local tourist taxes are collected and remitted by the hotels on the discounted rates paid by the Internet intermediaries to the hotels and not on the higher amounts paid by the customers occupying the rooms. As a result, state and local governments are not receiving both sales tax and tourist tax revenues on the markup.

Transient rentals represent a revenue base for both state and local government. Transient rentals involve the rental or lease of any living quarters or accommodations in any hotel, apartment motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less. Section 212.03, F.S., imposes the state's 6 percent sales tax on transient rentals. Section 212.054, F.S., provides that local discretionary sales surtaxes apply to transactions that are subject to state sales tax. Section 125.0104, F.S., authorizes counties to impose tourist development taxes on transient rentals. Counties may collect and administer the tax themselves if they adopt an ordinance in accordance with s. 125.0104(10), F.S. There are four local option taxes which impose additional levies only on transient rentals. These taxes are:

Tourist Development Tax - imposes a tax on transient rentals at a maximum rate of 6 percent. All counties are eligible to impose the tourist development tax. As of January 1, 2004, 53 counties levied tourist development taxes, with 38 self-administering the tax;

Tourist Impact Tax – a 1 percent tax restricted to areas of critical state concern. Only Monroe County imposes the tourist impact tax;

Convention Development Tax - imposes a tax on transient rentals at the maximum rate of 3 percent. The convention development tax is limited to Miami-Dade County, Duval County and Volusia County. All three counties levy the tax and self-administer the tax; and

Municipal Resort Tax – authorized and levied in just three cities, Miami Beach, Bal Harbour, and Surfside, at the maximum rate of 4 percent on transient rentals.

No other tourist development taxes may be imposed in municipalities levying the municipal resort tax.

Tourist taxes may be used to fund the following:

- Promote and advertise tourism in Florida;
- Convention or tourists bureaus and tourist information centers;
- Operational costs and bond indebtedness on publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;
- Promotion of zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;
- Bond indebtedness on professional sports franchise facilities; and
- Beach park facilities or beach improvement, maintenance, re-nourishment, restoration, and erosion control

Total local tourist tax revenue collections in fiscal year 2002-03 were \$353.5 million.¹

A travel agent in Florida is required to register as a “seller of travel” pursuant to s. 559.928, F.S., before engaging in certain activities. A “seller of travel” means any resident or nonresident person, firm, corporation, or business entity who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups, including, but not limited to, vacation or tour packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration.² Section 212.04(1)(d), F.S., provides that no additional tax is due on components incorporated as part of a package sold by a travel agent if the package includes two or more components such as admissions, transient rentals, transportation, or meals; if all of the component parts were purchased by the travel agent from other parties and any sales tax due on such purchases was paid; and there is no separate itemization of the component parts in the sales price of the package.

During the 2004 Legislative Session, an informal workgroup representing the Florida Hotel and Motel Association, one Internet intermediary company, a major Florida theme park, the Florida Association of Counties, and legislative staff discussed the problem. In addition, Department of Revenue staff participated as a source of information and support staff. As a result of these discussions, proposed legislation to ameliorate the problem was developed. The proposed legislation attempted to clarify the appropriate tax treatment of transactions in which an Internet intermediary of hotel rooms pays a hotel a discounted rate for a room that the intermediary then sells to a customer at a higher price. Workgroup members,

¹ Source: Department of Revenue, Office of Research and Analysis

² Section 559.927(10), F.S.

except for the Internet intermediary, supported most of the proposed changes. The Senate Finance and Taxation Committee held a workshop on April 13, 2004, to discuss the proposal to clarify the application of the tourist development tax for on-line sales of hotel rooms. The legislation proposed by the workgroup was not considered during the 2004 Legislative Session.

The Hotel Rewards Points Program

The question of whether or not hotels should remit taxes when a guest who is a member of a hotel rewards points program redeems previously acquired points to secure short-term lodging has been debated recently without resolution. The taxes in question are the same taxes discussed under “The Sale of Discounted Hotel Rooms Over the Internet” – state and local sales tax on transient rentals and local tourist-related taxes. Rewards points programs are established by hotel chains to encourage repeat business. Rewards points program members earn points each time they stay at a participating hotel. When the member earns a sufficient number of points, they can be exchanged for lodging at any hotel participating in the program. Some rewards points programs offer other ways to obtain points, such as purchasing them or using an affinity credit card, and other premiums in exchange for redeemed points, such as car rentals or airline frequent flyer miles. Under most rewards points programs, each hotel in the chain is contractually obligated to contribute a percentage of revenues received from guests who are program members to a central program fund, usually between 2 percent – 6 percent of the nightly room rate. Such contribution is made on a monthly basis. The program fund is used to promote the program and to compensate the chain that owns or franchises the participating hotels for services and expenses incurred for managing the program. When a member redeems points to stay at a participating hotel, that hotel receives a credit against its monthly obligation to fund the reward program.

The hotels argue that there is no consideration paid by the member guest to the hotel when points are redeemed, and that no tax is therefore due on those stays. Local governments argue that the rewards points redeemed by the member guest have value and are consideration, with the value of the consideration received by the hotel measured by the reimbursement received from the central fund in the form of a reduced contribution requirement for the month. Hotels have until recently accrued and remitted tax on that basis. After reassessing the applicable law, some hotels have submitted pending state and local refund requests. The Department of Revenue has not taken a binding position on this issue.

Methodology

Applicable state statutes were reviewed and documented on the taxation of transient rentals and complimentary rooms issued through the hotel rewards points program. Researched pertinent documents on the sale of discounted hotel rooms over the Internet and the rewards points program and researched the application of taxes on transient rentals to rooms sold over the Internet and to rewards points programs by other states. Obtained rewards points refund information from the Department of Revenue, certain counties and Grant Thornton LLP. Provided a draft copy of the interim report to members of the workgroup and other interested parties, to evaluate the data and provide comments. The workgroup consisted of representatives of the following organizations: legislative staff; the Department of Revenue; county governments; the Florida Hotel and Motel Association; one Internet intermediary company; a major Florida theme park, Grant Thornton LLP, and certain hotel chains that operate reward points programs.

Findings

The Sale of Discounted Hotel Rooms Over the Internet

The issue of on-line booking of discounted hotel rooms by Internet intermediaries has surfaced as a result of two main factors: 1) the increase since 2002 in sales of discounted hotel rooms over the Internet; and 2) tax laws that were adopted before the existence of Internet intermediaries. On-line sales of hotel rooms have been soaring as discount sites attract millions of customers. According to PhoCusWright, Inc., a travel intelligence organization that specializes in strategy, research and forecasting for the travel, tourism and hospitality industries, on-line hotel bookings will grow to nearly one-third of total gross bookings by 2006.³

In Florida, the sales tax on transient rentals is due on the total rental charged for the transient rental. Specifically, the transient rental tax states: “... a tax is hereby levied in an amount equal to 6 percent of and on the total rental charged for such living quarters or sleeping or housekeeping accommodations by the person charging or collecting the rental.”⁴

Florida’s tourist development tax is collected and remitted based on the total consideration charged for the lodging. Specifically, the tourist development tax states: “The tourist development tax shall be levied, imposed, and set by the governing board of the county at a rate of 1 percent or 2 percent of each dollar and major fraction of each dollar of the total consideration charged for such lease or rental.”⁵

The Internet intermediaries argue that the tourist development tax is measured by the amount paid to the hotel operator and that the facilitation fee⁶ is not subject to tax because it is not an amount paid to the hotel operator.

Internet intermediaries interact with their customers in one of two ways: as agents or merchants. As agents, they act as a middle-man between the customer and the hotels to reserve rooms. The customer reserves a room using a credit card, which the customer uses to pay the hotel bill at check-out. Taxes are charged on the total hotel bill at check-out. In these circumstances, the Internet customer is typically advised that taxes may or may not be included in the total cost listed on the web

³ www.traveldailynews.com, “PhoCusWright: 1/3 of All Hotel Sales to be Made Online by 2006,” September 2, 2004.

⁴ Section 212.03(1), F.S.

⁵ Section 125.0104(3)(c), F.S.

⁶ “Facilitation fee” is described by the Internet intermediary as a fee paid for “booking services.”

site. Agents do not arrange in advance of the customer’s transaction to purchase room inventory at the hotel.⁷

Merchants, buying blocks of rooms at wholesale prices from a hotel and selling them to consumers at higher prices, make far more money than agents. When acting as a merchant, the Internet intermediary charges its customers what it identifies as “taxes and fees.” But because the tax paid by the Internet intermediary is based on the wholesale rate, not the retail rate, the fee portion is much larger than it might seem. Because Internet intermediaries lump together what they charge in taxes and fees, consumers do not know how much they are paying for each.⁸

The rationale given by Internet intermediaries for not breaking out taxes and fees is that other on-line booking services would know what type of deals they made with lodging chains. The standard facilitation fee on such Internet room rates is 25 percent. Given that, the following exercise will demonstrate the estimated loss in tax revenue to both state and local governments from an Internet hotel reservation made through Expedia.com for the Wyndham Orlando Resort. Table 1 shows an actual reservation quote from Expedia.com.

Table 1
Expedia.com

Wyndham Orlando Resort

Guests: 2 adults	
Room rate 9/25:	\$99.00 per night
Taxes & service fees:	\$14.54 per night
What are Taxes & Service Fees?	The taxes are tax recovery charges Expedia pays to its vendors (e.g. hotels); The service fees cover Expedia’s costs in servicing your reservation.
Total room cost:	\$113.54
	Expedia Special Rate

Source: Expedia.com, September 14, 2004.

⁷ Gretchen Morgenson, “Web Site Financial Disclosure, the Barry Diller Way,” *The New York Times*, August 10, 2003, Sec. 3, p. 10, col. 1.

⁸ *Ibid.*, col. 2.

Table 2 calculates state and local taxes lost on the on-line reservation made in Table 1 as a result of the current practice of Internet intermediaries remitting tax on the discount hotel room rate instead of the actual rate charged the customer.

Table 2

Advertised Room Rent	\$ 99.00
Advertised Taxes & Fees	<u>14.54</u>
Total Room Rent	\$113.54
Estimated Discounted Rate (25%)	\$74.25
6% State Sales Tax	4.46
0.5% School Capital Outlay Surtax	.37
5% Orange Co. Tourist Dev. Tax	3.71
Total Taxes	<u>8.54</u>
Total Remitted to Hotel	\$82.79
Taxes Due on Total Room Rent	\$13.06
Taxes on Est. Discount Room Rate	8.54
Total Tax Loss	<u>(\$ 4.52)</u>
Profit to Expedia.com From Difference in Tax	\$ 4.52
% Increase in Profits Over Expedia.com Room Costs	6.1%

Local governments are concerned about the loss of tax revenues, primarily tourist-related tax revenues, as a result of the practice of Internet intermediaries remitting tax on the discount hotel room rate instead of on the actual room rent paid by the customer. The Florida Department of Revenue (DOR) has not taken an official position on this matter. The Florida Hotel and Motel Association has expressed their concern that if the DOR should decide that tax is due on the actual rent paid by the customer for the hotel room instead of on the discount rate paid to the hotel by the Internet intermediaries, that the hotels may be liable for back taxes.

During the 2004 Legislative Session, the Department of Revenue did a telephone survey of the other 49 states concerning the issue of taxes due on the Internet sale of discounted hotel rooms. (See Appendix A) Every state, except Louisiana responded to the survey. Significant findings from the telephone survey were:

States that tax the discount rate with no plans to review their position: Hawaii; New Jersey; New Mexico; Pennsylvania, Rhode Island; South Carolina; South Dakota; and Tennessee.

States that tax the retail rate: Wisconsin.

States that tax either rate depending on the terms of the contract with the hotel: North Carolina and Texas.

States that tax the discount rate but are considering the issue: Colorado and New Hampshire.

States that have considered the issue and tax the discounted rate: Arizona, Georgia and New York.

Besides Florida, there are several other states that have not taken a position on this issue but are actively pursuing it. These states include Alabama, Illinois, Massachusetts, Michigan, Minnesota, and Vermont. Legislation to close tax loopholes has been filed in Massachusetts. Included in the bill was the proposal to tax the retail rate charged the customer for the hotel room by the Internet intermediary. In the conference committee, this proposal was removed from the bill and sent to a committee for study.

The informal workgroup that discussed the issue during the 2004 Legislative Session included most major players. Workgroup members consisted of representatives from the Florida Hotel and Motel Association, the Florida Association of Counties, legislative staff, a major Florida theme park, and one Internet intermediary company. In addition, Department of Revenue staff participated as a source of information and support staff. Although not all of the proposed changes were embraced by all of the members of the workgroup, it was the consensus of the workgroup that if legislation was proposed to require Internet intermediaries to collect and remit tax on the total room rent charged the customer, instead of on the discount room rate, then the change would be prospective only. If certain conditions were met, no back taxes would be assessed. The Senate Finance and Taxation Committee held a workshop on April 13, 2004, to discuss the proposal to clarify the application of the tourist development tax for on-line sales of hotel rooms. No action was taken by the Legislature on the proposal.

Table 3 below compares the current practice of remitting tax on the discounted room rate with proposed changes adopted by the workgroup.

Table 3

	Current Application	Proposed Application
Example of Tourist Tax Paid at 11.5% Tax Rate ⁹	Discount rate: \$100 Facilitation Fee <u>25</u> Total rent: \$125 Tax remitted on discount rate to hotel/ DOR <u>\$11.50</u>	Discount rate: \$100 Facilitation Fee <u>25</u> Total rent: \$125 Tax remitted on total rent to DOR <u>\$14.38</u>
Tax Base	Internet intermediary pays tax on the discounted rate ¹⁰ of the hotel room	Internet intermediary pays tax on the total rent ¹¹ paid by the customer to the intermediary for the hotel room
Remittance of Tax	Hotel remits state tax to the DOR paid by the Internet intermediary to the hotel on the discounted rate of the hotel room. Hotel remits local tourist taxes either to the DOR or to the county, depending on whether the county self-administers the tax	<u>Dual Remittance:</u> Internet intermediary collects tax from the customer on the total rent, remits tax to the DOR on the facilitation fee ¹² & remits the discount rate plus tax to the hotel; hotel remits tax on the discounted rate to the DOR; or <u>Hotel-only Remittance:</u> Internet intermediary would disclose the total rent to the hotel and remit tax on the total rent to the hotel with payment of the discounted rate; hotel remits tax on the total rent to the DOR and self-administering counties. The hotel would be held harmless except for its obligation to report and remit total tax collected.

⁹ Transient rental tax rate of 11.5 percent for Orange County includes: 5% Tourist Development Tax; 0.5% School Capital Outlay Surtax; and the state 6% sales and use tax.

¹⁰ “Discounted rate” means the rate the hotel charges the Internet intermediary for the room.

¹¹ “Total rent” includes the total consideration a customer must pay in order to use or occupy a transient accommodation, including service charges or fees that are a condition of occupancy.

¹² “Facilitation fee” means the difference between the total rent and the discounted rate.

	Current Application	Proposed Application
Seller of Vacation Packages	Existing treatment of vacation packages would be retained.	Required to have registration certificate or proof of exemption with the DOACS under ch, 529. For audit, purposes, must maintain records documenting the prices paid for package components, the taxes paid to the sellers of the component parts, and the sale of packages that included those components without stating a separate price for them.
Registration Required	N/A	<u>Duel Remittance</u> : Yes, either as sales tax dealer or seller of vacation packages ¹³ <u>Hotel-only Remittance</u> : No Separate registration for each county or for each hotel is not required
Reporting and Payment	N/A	Consolidated return. Reporting would contain information to permit the DOR to distribute local tourist taxes to proper jurisdictions
Audit Authority	N/A	Internet intermediary subject to audit by local governments that self administer tourist taxes only if intermediary's Florida activity was limited to single county, otherwise, audit authority rests with the DOR ¹⁴
Amnesty	N/A	Internet intermediary that registers with the DOR to pay taxes by a date certain and agrees to prospective compliance will be held harmless for any past liability for tax on the higher rate paid by the customer over the rental paid to the hotel ¹⁵

¹³ Pursuant to s. 212.04(1)(d), F.S., to qualify as a "travel agent" entitled to take advantage of this provision, a person would have to be a "seller of travel" as described in s. 559.927, F.S., and be registered with the Department of Agriculture & Consumer Services or be able to document an exemption from the registration requirements.

¹⁴ Local governments would be authorized to submit requests to DOR to investigate a company when warranted by specific information or evidence.

¹⁵ Rentals subject to amnesty and application for amnesty will have to be made before a date certain.

On November 17, 2003, the Florida Association of Convention & Visitors Bureaus (FACVB) issued a briefing paper entitled: "Tourist Development Tax Considerations of Internet Sales," in which they proposed the following legislative solution:

A company that buys a block of rooms, marks them up, sells them over the Internet and has its own cancellation policy must collect and remit hotel taxes on the amount a customer pays.

Companies that have purchased blocks of rooms for resale, sold them to consumers and only remitted taxes on the amount passed along to the hotel, shall be offered amnesty for taxes due on the difference between the customer's purchase price and the price remitted to the hotel if they voluntarily comply with the law and begin remitting taxes.

Although the FACVB did not participate in the 2004 informal workgroup, their recommendations track the workgroups proposed legislation. The amount of state and local tax revenue lost as a result of Internet intermediaries remitting tax on the discounted hotel room rate instead of the total room rate charged their customers is indeterminate. Based on fiscal year 2002-03 total collection of \$353.5 million in tourist development taxes and convention development taxes, for each 1 percent of tax loss due to this practice by Internet intermediaries, the local revenue loss would be \$3.5 million in tourist tax collections.

The Hotel Rewards Points Program

Until recently, hotels in Florida collected and remitted both state and local sales taxes as well as tourist-related taxes on free lodging as the result of a guest redeeming hotel rewards points for a free stay. The hotels treated their reimbursements from the reward fund in the same manner as other room revenue. Since no guest was paying tax, the hotels self-accrued tax on the reimbursement amount and submitted it monthly with their regular sales tax return. The accounting firm of Grant Thornton LLP was retained by certain hotel chains to review the tax treatment of rewards points programs nationwide, focusing on high redemption states such as Florida.

How Does the Hotel Rewards Points Program Work?

Under most hotel rewards points programs, when a hotel guest provides a hotel rewards point card at check-in, the guest is earning points towards a free stay or other amenities with the hotel. At the time of check-in, the hotel records an expense of between 2 percent and 6 percent of the nightly room rate, depending on the specific program. All taxes are paid on the total amount paid by the guest for the room, which includes the amount expensed. When a guest redeems

rewards points for a free stay at the hotel, the guest redeems the points with the program's redemption center. The redemption center removes the points from the member's account and makes the reservation at the hotel chosen by the rewards points' member. When a guest checks into the hotel, the guest provides the hotel with either a certificate for a free room, which the guest received from the redemption center, or a confirmation number.

Each hotel in a chain that offers a rewards points program is required to participate in the program by terms of its management agreement. Each hotel pays on average, about 4 percent of room revenues from guests who are members of the rewards points program into a central fund every month. The 4 percent is taxed as part of the room charge, but is transferred to the central fund for payment of rewards stays at a later date and to cover the costs of administering the fund. For example, if a rewards guest pays \$200 per night for the room, the hotel retains \$192 but remits the transient rental and tourist development tax on the full \$200. The hotel's account is credited a certain amount when rewards points are used at their hotel for a free night's stay. The credit is a set amount that is designed to cover the expenses the hotel will incur for the free room.¹⁶ Each hotel has a balance in the central fund directly related to its contributions and credits. If the amount of credit to a hotel exceeds the amount due from that hotel to the central fund in any particular month, the credit is carried forward and applied against the hotel's obligation to pay in the following month.

No two hotel rewards points programs are the same. Following are two examples of some of the benefits awarded to members of rewards points programs for Hyatt and Marriott hotels.

Hyatt Gold Passport - Hyatt's rewards points program has three membership levels. Each progressively higher level includes benefits awarded to lower levels.

¹⁶ In certain instances where the hotel is fully occupied, the credit will be an amount that is higher than the set amount.

Hyatt Gold Passport

Gold Membership	Platinum Members	Diamond Members
5 points for every \$ spent or 500 airline miles	15% point bonus	30% point bonus
Private Reservation Line	After every third stay in a calendar year receive a certificate providing a choice of a Regency® Club upgrade, a complimentary amenity, or bonus points for dining	72 hour Guaranteed Room Availability
1-800-CHECK-IN® to receive room # early & Express check-in		Upgrades to Regency Grand Club
Complimentary morning newspaper & beverage		Access to Regency Grand Club Lounge; Continental Breakfast
Use of Fitness Centers	Private Platinum Reservation & Account Information Line	Special welcome gift
US \$250 check-cashing	Award options: Award Transferability and <i>Passport Plus</i> Awards	Diamond Reservation and Account Information
Late checkout on request		US \$500 check-cashing
Special offers from Hyatt & hotel & travel partners		

Source: www.hyatt.com/corporate – September 15, 2004

In addition to redeeming points for free hotel rooms or upgrades, the Hyatt Gold Passport member can:

- Convert points to air miles
- Transfer a Gold Passport hotel award to a friend or family member
- Combine points with a family member who is also a Gold Passport member
- Purchase points
- Earn 300 bonus points when they fly certain airlines in conjunction with their Hyatt visit and when they rent a car from certain car rental companies

Marriott Rewards - Like Hyatt's Gold Passport, Marriott Rewards has three levels of membership. Each progressively higher level includes benefits awarded to the lower levels

Marriott Rewards

Silver	Gold	Platinum
20% Bonus on Marriott Rewards Base Points	25% Bonus on Marriott Rewards Base Points	30% Bonus on Marriott Rewards Base Points
Elite Member Exclusive Reward Redemptions	Guaranteed Room Type	
Elite Reservation Line	Room Upgrade at No Additional Charge	48 Hour Guaranteed Availability
Exclusive Guest Services Line	Guaranteed Lounge Access	
Ultimate Reservation Guarantee	Free Continental Breakfast	Platinum Arrival Gift
Priority Late Checkout	Priority Late Checkout	Dedicated Platinum Reservation Line
10% Weekend Discount	\$500 Check-Cashing Privileges	
\$200 Check-Cashing Privileges	Free Local Phone/Fax	\$500 Check-Cashing Privileges
10% Marriott Gift Shop Discount	Exclusive Elite Member Offers	

Source: www.marriott.com/rewards – September 15, 2004

In addition to redeeming points for free hotel rooms or upgrades, the Marriott Rewards member can:

- Redeem points for air miles
- Redeem points for rental cars, overseas rail, and cruise ships
- Redeem points for golf lessons, a round of golf, ski packages, spa packages, sightseeing packages, adventure packages, theatre tickets, and theme park tickets
- Redeem points for Marriott Gift Certificates and Marriott Cheques. (Tax liability associated with use of gift certificates and cheques is the recipients' responsibility.)
- United Kingdom and Japan shopping vouchers
- Transfer points between spouses
- Purchase points

The Debate

There are two sides to the debate of the application of the tourist development tax to the hotel rewards points program. The hotels, through the accounting firm of Grant Thornton LLP, have taken the stand that there is no consideration paid by the guest to the hotel for the room when the guest redeems his or her rewards points through the central fund for a free room certificate, thus no tax is due. On the other hand, some local governments believe that the rewards points program provides for the transfer of consideration to a hotel when points are redeemed and used for lodging at the particular property. The hotels have debts to the program that are reduced by the redemption of rewards points. Thus, the use of the points results in a transfer of value or consideration and is taxable.

On April 2, 2004, the Florida Department of Revenue hosted a public meeting in Orlando, Florida to gather information on the rewards points programs and the tax treatment of such programs. Attendees represented the following organizations: the Florida Department of Revenue; the accounting firm of Grant Thornton LLP; Marriott International; Intercontinental Hotels Group; the Florida Hotel and Motel Association; Bay County; Brevard County; Broward County; Hillsborough County; Lake County; Martin County; Manatee County; Monroe County; Orange County; Osceola County; Pinellas County; Polk County; Sarasota County; St. Lucy County; St. Johns County; Volusia County; and West Palm Beach County.

No Consideration Paid by the Guest to the Hotel, So No Tax Due

Section 212.03(4), F.S., states that "...no tax shall be imposed upon rooms provided guests when there is no consideration involved between the guest and the public lodging establishment." Rule 12A-1.061(3)(f), Florida Administrative Code, states that "owners or owners' representatives of transient accommodations who provide transient accommodations to guests or tenants for no consideration, are not required to collect tax from the guest or tenant or pay tax on the value of the accommodation."

In response to a request for a Technical Assistance Advise ment (TAA)¹⁷ dated August 27, 1999, the Department of Revenue issued TAA 00A-015 on March 30, 2000. TAA 00A-015 answered three questions relating to sales tax, including the following:

Whether hotel accommodations provided for no consideration are subject to the sales tax imposed by s. 212.03, F.S. The pertinent information provided in the TAA is provided below.

¹⁷ A Technical Assistance Advise ment is a written response which is binding on the Department of Revenue only under the facts and circumstances described in the request for advice.

Fact

The following facts are those provided as salient with respect to the requested advisement concerning accommodations provided for no consideration:

(Taxpayer) in its Group Agreement provides, complimentary room nights to Group Guests depending upon the number of fully paid room night rentals. The Group Agreement typically provides one (1) complimentary room night for every (50) fully paid room nights utilized. The type of complimentary room provided may be upgraded according to the schedule provided in the Group Agreement. Additionally, (Taxpayer) may provide complimentary rooms to its vendors, potential guests for site visits, and to friends and family members of (Taxpayer's) employees. (Taxpayer) does not collect consideration in connection with the provision of any complimentary room. These practices are consistent and typical in the hospitality industry.

Discussion, Analysis, and Conclusion of Law

Section 212.03(4), Florida Statutes, provides that no tax is "imposed on rooms provided guests when there is no consideration involved between the guest and the public lodging establishment."

Rule 12A-1.061, Florida Administrative Code, provides in pertinent part:

(3)(f) Owners or owners' representatives of transient accommodations who provide transient accommodations to guests or tenants for no consideration, as provided in paragraph (a), are not required to collect tax from the guest or tenant or pay tax on the value of the accommodation.

In response to the question posed concerning whether tax is due on transient accommodations provided to guest for no consideration, the TAA concluded that: "Tax is only due on consideration, or charges for the rental of transient accommodations. If no consideration is charged or given for the use of transient accommodations, no tax is due."

On two separate occasions, (May 22, 2002 and August 21, 2003) the accounting firm of Grant Thornton LLP submitted a request for a Letter of Technical Advice (LTA)¹⁸ to the Florida Department of Revenue on behalf of two different brand hotels having rewards points programs. The requested advisements asked the following questions:

¹⁸ A Letter of Technical Advisement is a written response based upon the facts and circumstances of a specific situation, as presented, and is not an official statement or opinion of the Department of Revenue but, instead, represents the opinion of the writer.

1. Is the compensation received by the individual hotel from the fund subject to Florida sales or use tax?
2. Is the exercise of the right to a free stay in a Florida hotel subject to Florida sales or use tax?
3. Is the exercise of the right to a free stay in a Florida hotel subject to local hotel occupancy tax?
4. If items 1. or 2. are affirmative, does this not violate the Florida statutes that prohibit duplication or pyramiding of tax?

On each separate occasion, the department responded with a LTA from Ms. Sara Faulkenberry, Tax Law Specialist, Technical Assistance and Dispute Resolution. Letter of Technical Advice 02A-740 dated July 24, 2002, (See Appendix B) and Letter of Technical Advice 03A-824 dated September 12, 2003 (See Appendix C) made the following determination:

Section 212.03(4), Florida Statutes, expressly prohibits the imposition of tax on rooms when there is no consideration between the guest and the hotel. Therefore, even though the hotel may receive some reimbursement for lost revenue or expenses from a central fund, this reimbursement does not constitute consideration from the guest.

There is no tax (state or local) on the free rooms provided to/redeemed by guests, or on the compensation from the central fund for the use of those rooms.

On June 26, 2003, Bert Gerez, Tourist Development Tax Auditor, Monroe County Clerk of the Circuit Court, submitted a request for a LTA to the department. The requested advisement asked the following question:

- Are the rewards points credits received from the central office by the hotels subject to Florida sales and use tax? Monroe County Tourist Development Tax?

On August 3, 2003, Tammy S. Manke, Attorney, Technical Assistance and Dispute Resolution, responded with Letter of Technical Advice 03A-699, (See Appendix D) with the following determination:

Section 212.03(1), F.S., generally imposes tax on transient rentals. Section 212.03(4), F.S., states in pertinent part that "...no tax shall be imposed upon

rooms provided guests when there is no consideration involved between the guest and the public lodging establishment.”

Counties that impose tourist development tax, tourist impact tax, or convention development tax on the rental of transient accommodations are bound by the rules of the Department of Revenue concerning the taxation of transient rentals, as well as by the provisions of s. 212.03, F.S.

Section 212.03(4), F.S., expressly prohibits the imposition of tax on rooms when there is no consideration between the guests and the hotel. Therefore, even though the hotel may receive some reimbursement for lost revenue or expenses from a central fund, this reimbursement does not constitute consideration from the guest.

There is not tax (state or local) on the free rooms provided to or redeemed by the guest, or on the compensation from the central fund for the use of those rooms.

Rewards Points Redeemed by Member Guests Have Value and Are Taxable

Section 125.0104(3)(a), F.S., provides that every person who rents, leases or lets for consideration living quarters or accommodations in any hotel...for a term of six months or less is exercising a privilege which is subject to taxation, unless the transaction is exempt under the provisions of Chapter 212.¹⁹ Section 212.21(2), F.S., provides that it is the intent of the legislature to tax each and every rental unless it is specifically exempt. Rental charges or room rates for the use or possession, or the right to the use or possession, of transient accommodations are subject to tax, whether received in cash, credits, property, goods, wares, merchandise, services, or other things of value.²⁰

On behalf of Orange County, Usher L. Brown of Brown, Salzman, Weiss & Garganese, P.A., was asked to answer the question of whether or not the use of rewards points to secure short-term lodging is “consideration” subject to the tourist development tax. (See Appendix F) Mr. Usher used the following two step analysis in determining whether or not the use of rewards points to secure short-term lodging is a taxable event:

1. Is there consideration for short-term lodging when rewards points are used?
2. If yes, is the consideration paid from the customer to the hotel taxpayers?

¹⁹ See also *Florida Administrative Code*, Rule 12A-1.061(1)

²⁰ *Florida Administrative Code*, Rule 12A-1.061(3)

Question 1: Is there consideration for short-term lodging when rewards points are used?

As discussed above in Rule 12A-1.061(3), Florida Administrative Code., the Department of Revenue has defined “taxable consideration” to include “credits” and “anything of value.” Consideration is defined in a variety of ways. One definition is, “the cause, motive, price or impelling influence which induces a contracting party to enter into a contract.” Further, credit is defined in relevant part, “the correlative of debt; that is, a debt considered from the creditor’s standpoint of that which is incoming or due to one. That which is due to a person as distinguished from debit, that which is due by him.”²¹

Mr. Usher concluded that reward points are redeemed as consideration for the lodging because:

- Hotel taxpayers are contractually required to contribute money to the central rewards program fund.
- The obligation to the rewards program is a debt of the hotel taxpayers.
- When a guest redeems points in consideration of lodging the hotel taxpayers, by virtue of the redemption, receives a benefit (value) in the form of a credit against its debt obligation to the monthly rewards program.
- This redemption in debt is through the use of “credits” and is something of “value” in consideration of short-term rental accommodations, and as such, is taxable.²²

Question 2: If yes, is the consideration paid from the customer to the hotel taxpayers?

Pursuant to s. 212.03(2), F.S., the same duties imposed by chapter 212 upon dealers in tangible personal property with respect to “...the collection and remission of tax...shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, rooming houses, tourist and trailer camps, and the rental of condominiums, and to all persons who collect or receive such rent on behalf of such owner or lessor taxable under chapter 212.”

Rule 12A-1.060, Florida Administrative Code, provides for the registration of sales tax dealers. Any person exercising a taxable privilege of engaging in the business of renting, leasing, letting, or granting licenses to others to use transient

²¹ Black’s Law Dictionary (Sixth Edition)

²² *Florida Administrative Code*, Rule 12A-1.061(3)

accommodations is required to register as a sales tax dealer and must obtain a separate dealer's certificate of registration for each place of business where transient accommodations are provided. Any agent, representative, or management company may collectively register transient accommodations under the following conditions:

- The agent, representative, or management company holds a valid dealer's certificate of registration for each place of business;
- The agent, representative, or management company is authorized by means of a written agreement with the property owner to collect rental charges or room rates due on any transient accommodations; and
- The written agreement contains the following provisions acknowledged by the property owner:
 - The property owner is ultimately liable for any sales tax due the State of Florida on rentals, leases, lets, or licenses to use the owner's property; and
 - In the event that the State of Florida is unable to collect any taxes, penalties, and interest due from the rental, lease, let, or license to use the owner's property, a warrant for such uncollected amount will be issued and will become a lien against the owner's property until satisfied.²³

Mr. Brown argues that the hotel rewards points program administrator acts as an agent for the hotel, and thus is a dealer granting a license to occupy the room, and is responsible to collect and remit the tax. If the agent fails to remit tax, the principal of the agent, (the hotel) is liable.

Mr. Brown concludes that there is consideration directly flowing between the guest and the hotel, because the redemption of rewards points, whether through an intermediary or not, results in a direct benefit to the property, by extinguishment or reduction of a debt otherwise owned by the hotel. And, it is the guest who chooses to redeem his valuable points for a "license" (or right) to stay at a particular hotel.

Refunds

The accounting firm of Grant Thornton LLP has filed refund requests on behalf of its clients for tourist development taxes paid on complimentary rooms issued through the rewards points program with the Florida Department of Revenue, 31 counties and the cities of Miami Beach and Bal Harbour. (See Table 3) In addition, some hotel chains have also filed refund requests with the department

²³ *Florida Administrative Code*, 12A-1.060(3)

and with counties. Table 1 is a summary table of counties with tourist development tax collections in excess of \$10 million for fiscal year 2002-03, which represents 77 percent of total tourist development tax collections, and total refund requests as reported by the county. (See Appendix F for detailed refund requests per county) Table 2 represents refunds requests of the Department of Revenue for sales tax paid on transient rentals on complimentary rooms issued through the hotel rewards points program.

Table 1
Counties with Tourist Development Tax Collections over \$10 million
And Total Refund Requests
FY 2002-03

County	TDT Collections	Refunds Requested**
Broward	\$ 27,849,502	\$ 106,448
Miami-Dade	44,405,155	232,672
Duval	11,753,090	18,569
Hillsborough	15,051,794	64,921
Lee	10,949,626	35,012
Monroe	16,788,143	86,969
Orange	91,683,289	944,166
Osceola	22,215,015	10,959
Palm Beach	17,269,639	38,108
Pinellas	15,622,776	40,195
Total*	\$ 273,588,029	\$ 1,578,019

* Total tourist development tax collections for FY 2002-03 were \$353,547,415

** Refund requests as reported by counties. (See Appendix F for detailed county refund requests.)

Table 2
Florida Department of Revenue Sales Tax Refund Requests

Refund Requests	Amount of Refund Request	Dates Covered by Refund Request
Grant Thornton	\$ 317,619	Sept. 1998 - May 1999 June 200 - May 2003
Hotel Brand	16,243	Dec. 1999 - Nov. 2002
Grant Thornton	20,293	Jan. 2001 - Jan. 2004
Grant Thornton	7,143	Mar. 2003 - Jan. 2004
Hotel Brand	2,681	Jan. 1999 - May 1999
Grant Thornton	354,653	Jan. 2001 - Jan. 2004
Grant Thornton	94,695	Jan. 2001 - Aug. 2003
Grant Thornton	3,379	Mar. 2002 - May 2003
Hotel Brand	129,246	April 2001 - Mar. 2004
Grant Thornton	425,775	Jan. 2001 - Aug. 2003
Hotel Brand	146,898	Jan. 1997 - July 2004
Hotel Brand	123,514	Jan. 1998 - July 2004
Total Refunds	\$ 1,736,834	

Note: Refund decisions pending completion of audit by DOR

**Table 3
Hotel Rewards Refund Requests Submitted by Grant Thornton LLP**

County	Refund Requests	Refunds Paid	Outstanding Refunds
Alachua	\$ 1,193		\$ 1,193
Bay	32,549		32,549
Brevard	4,482		4,482
Broward	99,402		99,402
City of Miami Beach	79,063	69,081	9,982
Collier	22,105		22,105
Columbia	517	517	-
Dade	199,116	185,897	13,219
Duval	22,229	3,660	18,568
Escambia	14,938	887	14,050
Hillsborough	57,439		57,439
Indian River	2,071	2,071	-
Lake	1,531		1,531
Lee	33,317		33,317
Leon	982		982
Madison	303		303
Martin	1,397		1,397
Monroe	84,196		84,196
Nassau	7,567		7,567
Okaloosa	13,635		13,635
Orange	689,045		689,045
Osceola	14,022		14,022
Palm Beach	36,370		36,370
Pinellas	35,946		35,946
Polk	1,252		1,252
Santa Rosa	3,308		3,308
Sarasota	11,866		11,866
St Johns	2,464		2,464
St Lucia	879		879
Village of Bal Harbour	10,777	10,777	-
Volusia	10,594		10,594
Volusia	9,942		9,942
Washington	235	235	-
Totals	\$ 1,504,732	\$ 273,126	\$ 1,231,606

Note: Refund periods vary by hotel. Most claims are through October 2003.

Other States

There are other states that have issued rulings supporting both positions. Massachusetts and Texas have issued rulings supporting the position that there is no tax due on complimentary rooms because there is no consideration paid by the guest to the hotel for the room. New York issued a ruling supporting the position that the hotel receives consideration in the form of reimbursement from the central fund for guests participating in the hotel rewards points program and that tax is due on the amount of consideration.

Massachusetts

In response to the question, “Are rooms provided on a complimentary basis by a hotel subject to the room occupancy excise,” Massachusetts Department of Revenue Directive 99-2, concluded that “...the room occupancy excise must be collected by any operator of a hotel, motel or lodging house whenever he or she receives sufficient consideration” (rent of \$15 or greater) “in any form for the right to occupy a complimentary room.” Rent is defined as: “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, and also any amount for which credit is allowed by the operator to the occupant, without deduction there from whatsoever.”

Directive 99-2 provided the following example to illustrate that tax is not due on complimentary rooms. “A hotel gives a complimentary room for a night for multiple nights stayed as part of a “frequent traveler” program. The only benefit realized by the hotel is the rentals received from the paying group members. No additional excise is imposed.”²⁴

Texas

Two separate Texas Public Accounting Letters, No. 200310127L (October 6, 2003) and No. 200401343L (January 23, 2004) answered the following question: Are transient rooms or upgrades provided to guests free of charge through redemption of the hotel rewards points program subject to state, county or municipal hotel occupancy taxes? In response, both letters concluded that state, county and municipal hotel occupancy taxes are not due on transient rooms or upgrades provided to guests through the hotel rewards points program. This however, is not because the hotel does not receive payment or consideration from the guest that actually occupies the room. It is because the hotel is, in effect, paying itself for the room and upgrades.

²⁴ It is not clear that Massachusetts was considering a program that involved reimbursements from a central fund.

When the rewards point member (occupant) redeems points for a free night's stay, the central reservation awards desk issues an electronic award number for the reservation. The occupant provides the award number upon check-in at the hotel and the hotel receives reimbursement from the fund. The reimbursement from the fund is withdrawn from the hotel's previous contributions to the fund.

Because the amount received from the awards fund is money previously paid to the fund by the hotel, the hotel is providing a free room or upgrade and there is, in effect, no consideration.

On May 10, 2004, Public Accounting Letter No. 200405570L provided the following summary of one type of hotel rewards points redemption program.

Members earn reward points when staying at participating hotels. Each time a member stays, the participating hotel pays the rewards program a predetermined amount, plus administrative costs. Reward points are accumulated and redeemed for a free room or upgrade. When redeemed, the hotel is reimbursed by the rewards fund.

Reimbursements to hotels may or may not be subject to hotel tax, depending on how rewards points redemption programs operate.

Hotel occupancy taxes are due when a hotel receives consideration of \$15 or more per day for a room, unless an exemption applies. For reimbursement to not be taxable, hotel records must show that the hotel had paid the rewards fund at least an amount equal to a specific month's reimbursement, as well as administrative charges, prior to receiving the reimbursement.

For example, in January the hotel paid the rewards fund \$669.50 (\$650 for member stays plus a 3% administrative charge). Also in January, the hotel had five redeemed night stays at \$125 per night. On February 1, the rewards fund "reimburses" the hotel \$625 for January's redeemed nights. In this instance, no tax is due because the amount received from the rewards fund is money previously paid to the fund by the hotel. There is no consideration because the hotel is, in effect, paying itself for the free rooms.

But if in January the hotel had six redeemed night stays and the rewards fund "reimburses" the hotel \$750, tax would be due on \$100 (the amount not paid to the fund, excluding administrative charges). Tax is still due even if the next month the hotel contributes more to the rewards fund than it is reimbursed.

New York

On September 12, 2004, the New York Department of Taxation and Finance receive a Petition for Advisory Opinion from a New York hotel. The issue raised by the hotel is whether the amounts paid by the Hotel Rewards Night point program to the hotel for the hotel's provision of hotel occupancy to reward program participants are subject to tax. Advisory Opinion TSB-A-04(19)S was issued on September 2, 2004, and ruled that, as presented in the case, the hotel receives consideration from its franchiser for the occupancy provided by the hotel for guests participating in the franchiser's Hotel Reward Night point redemption program. The rent for such occupancy need not be charged directly to the hotel guest in order to be subject to tax. Accordingly, the hotel is required to collect the sales tax imposed by s. 1105(e)²⁵ of the Tax Law from the franchiser on the amount of consideration received from the franchiser for such occupancy.

²⁵ Section 1105(e) of the Tax Law provides in part: "...there is hereby imposed and there shall be paid tax...upon:

(e) 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) a permanent resident, or (2) where the rent is not more than at the rate of two dollars per day."

Conclusions and Recommendations

The Sale of Discounted Hotel Rooms Over the Internet

The sale of discounted hotel rooms over the Internet by Internet intermediaries such as Priceline.com and Expedia.com, has skyrocketed over the past several years. In 2006, such on-line hotel bookings are estimated to grow to nearly one-third of total gross bookings. As a result, both state and local governments could be losing significant amounts of revenue. During the 2004 Legislative Session, a work group of vested parties met to discuss the issue. Legislation was proposed to clarify the appropriate tax treatment of transactions in which an Internet intermediary of hotel rooms pays a hotel a discounted rate for a room that the Internet intermediary then sells to a customer at a higher price. The proposed legislation was not supported by the Internet intermediaries and the remaining workgroup members did not agree with all aspects of the proposed legislation.

In Florida, tax on transient rentals is due on the *total rental charged for the transient rental*.²⁶ Tourist development tax is collected and remitted based on the *total consideration charged for the accommodation*.²⁷ The current practice of Internet intermediaries remitting taxes on the discounted rate paid by the Internet intermediaries to the hotels and not on the higher amounts actually paid by the customer occupying the room is in violation of Florida law.

It is the recommendation of this report to submit for consideration the legislation developed by the workgroup that requires that tax be collected and remitted on the total rent charged the customer by the Internet intermediary for the hotel room. Specifically the legislation would:

- Apply all state and local taxes to the total rent paid by the customer to the Internet intermediary for the hotel room.
- Provide two options for the remittance of the tax:
 - Dual remittance – the Internet intermediary collects tax from the customer on the total rent, remits tax to the DOR on the facilitation fee; remits the discount rate plus tax to the hotel and the hotel remits tax on the discounted rate to the DOR; or
 - Hotel-only remittance – the Internet intermediary would disclose the total rent charged the customer to the hotel and remit tax on the total rent to

²⁶ Section 212.03(1), *Florida Statutes*

²⁷ Section 125.0104(3)(c), *Florida Statutes*

the hotel with the payment of the discounted rate; the hotel remits tax on the total rent to the DOR and self-administering counties. The hotel would be held harmless except for its obligation to report and remit total tax collected.

- A seller of vacation packages would be required to have its registration certificate or proof of exemption from registration with the DOACS under chapter 559.
- For audit purposes, a seller of vacation packages would need to maintain records documenting the prices paid for package components, the taxes paid to the sellers of those components, and the sale of packages that include those components without stating a separate price for them.
- Internet intermediaries can register as either a sales tax dealer or a seller of vacation packages; single registration is authorized, but not required.
- Consolidated returns would contain information to enable DOR to distribute local tourist taxes to the proper jurisdictions.
- Internet intermediaries would be subject to audit by local governments that self administer tourist taxes only if the Internet intermediaries' Florida activity was limited to a single county, otherwise, audit authority rests with the DOR.
- Internet intermediaries registering with the DOR to pay taxes by a certain date and agreeing to prospective compliance will be held harmless for any past liability for tax on the facilitation fee over the rental paid to the hotel.

The Hotel Rewards Points Program

Until recently, hotels in Florida collected and remitted both state and local sales taxes as well as tourist-related taxes on free lodging as the result of a guest redeeming hotel rewards points for a free stay. The hotels treated their reimbursements from the reward fund in the same manner as other room revenue. This all changed when the accounting firm of Grant Thornton LLP was retained by certain hotel chains to review the tax treatment of rewards points programs nationwide. With its high tourist trade, Florida became a focal point of the review.

There are two sides to the debate of the application of the tourist development tax to the hotel rewards points program. The Department of Revenue hosted a meeting on April 2, 2004, in Orlando, offering a forum for interested parties to present their opinions on the issue. The hotels, primarily through the accounting firm of Grant Thornton LLP, have taken the stand that there is no consideration

paid by the guest to the hotel for the room when the guest redeems their rewards points through the central fund for a free room certificate. As a result, no tax is due. On the other hand, most local governments believe that the rewards points program provides for the transfer of consideration to a hotel when points are redeemed and used for lodging at a particular hotel. The hotels have debts to the program that are reduced by the redemption of rewards points. Thus, the use of rewards points results in a transfer of value or consideration and is taxable.

Each hotel in a chain that offers a rewards points program is required to participate in the program by terms of its management agreement. Each hotel pays on average, about 4 percent of room revenues from guests who are members of the rewards points program into a central fund every month. The 4 percent is taxed as part of the room charge, but is transferred to the central fund for payment of rewards stays at a later date and to cover the costs of administering the fund. Each hotel has a balance in the central fund directly related to its contributions and credits. Rewards points apply to national and international hotel chains and rewards points are earned from hotel rentals in Florida as well as hotel rentals in other states and outside of the United States. When a hotel receives reimbursement from the central fund, it is receiving money previously paid into the fund by the hotel, money that, in Florida, both state and local sales tax and tourist development taxes have been paid. If the amount of credit to a hotel exceeds the amount due from that hotel to the central fund in any particular month, the credit is carried forward and applied against the hotel's obligation to pay in the following month.

The question of whether consideration is paid by the guest to the hotel for the complimentary room when the guest redeems their rewards points through the central fund is moot. Since all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel rewards points members, tax is not due when such funds are redeemed. To do so would result in pyramiding of taxes. Since the reimbursement received by the hotel from the central fund is money previously paid to the fund by the hotel, the hotel is, in effect, paying itself for the free room or upgrade. In any given month, when a hotel pays more into the fund then reimbursed by the fund, the hotel does not owe any tax, because the hotel has already paid tax on the funds. However, if in any given month, a hotel is reimbursed more than was paid into the fund by the hotel, tax is due on the amount of money not paid to the fund that month. In other words, "money not paid to the fund" is the excess of the reimbursement from the fund for a given month over the contributions to the fund for the same month by the participating hotel. When an excess occurs, it reflects that more rewards points earned outside of Florida are being redeemed in Florida, thus tax is due. This is the approach used by the State of Texas. This approach would not cause an administrative hardship on hotels because it follows the monthly record keeping required for the rewards points program.

If policy makers determine that tax is due only when a hotel is reimbursed more than was paid into the fund by the hotel in any given month, a decision needs to be made on how to deal with current refund requests. One approach would be to treat the taxable status of the rewards points program retroactive to the date of the first refund request. Refund requests submitted prior to a date certain would need to be re-filed to reflect each hotel's monthly contributions to the central fund v. the hotel's monthly reimbursement. Counties and the Department of Revenue would owe refunds to hotels when the hotels' monthly contributions to the central fund exceeded their monthly reimbursements. When the hotels' monthly reimbursements from the central fund exceeded their monthly contributions, tax would have been owed on the amount not paid into the fund that month, so no refunds would be owed the hotel.

The question of whether or not hotels should remit taxes when a guest receives a complimentary room through redemption of rewards points can only be answered by policy makers. Local governments do not want to forgo any tourist development taxes, because they utilize the revenues to promote tourism. Increased tourism results in increased tourist development tax collections. While it is understandable that local governments want and need as much tourist development tax revenues as possible, it is important to put this issue into perspective. Table 4 shows the impact of refund requests on counties representing 75 percent of total tourist development taxes collected over the four year period of July 1, 1999 through June 30, 2003. Total refund requests of \$1.6 million represent only 0.14 percent of total tourist development tax collections over the four years for the ten counties. The refunds cover the dates of August 1997 through March 2004, and if the refunds were able to be broken out by all seven fiscal years, the percentage would be even lower than the 0.14 percent.

Table 4
Counties with Tourist Development Tax Collections over \$10 million;
Refund Requests as % of Total
Fiscal Years 1999-00 through 2002-03

County	FY 1999-00 (Millions)	FY 2000-01 (Millions)	FY 2001-02 (Millions)	FY 2002-03 (Millions)	4-Year Total (Millions)	Refunds Requested**	Refund Requests as % of Total TDT Collections
Broward	\$ 2.5	\$ 27.6	\$ 25.2	\$ 27.8	\$ 83.1	106,448	0.10%
Miami-Dade	47.5	50.1	42.7	44.4	185	232,672	0.13%
Duval	9.2	11.3	11.5	11.8	44	18,569	0.04%
Hillsborough	14.7	16.7	14.5	15.1	61	64,921	0.11%
Lee	10.8	11.8	10.9	10.9	44	35,012	0.08%
Monroe	14.6	16.7	16.3	16.8	64	86,969	0.14%
Orange	105.9	107.9	91.2	91.7	397	944,166	0.24%
Osceola	24.4	23.8	21.4	22.2	92	10,959	0.01%
Palm Beach	17.8	18.7	16.6	17.3	70	38,108	0.05%
Pinellas	16.8	17.4	15.4	15.6	65	40,195	0.06%
Total*	\$ 264.2	\$ 302.0	\$ 265.7	\$ 273.6	\$ 1,105.5	\$ 1,578,019	0.14%
% of Total	0.68	0.79	0.78	0.77	0.75		

* Total tourist development tax collections: FY 1999-00 - \$359.3 million; FY 2000-01 - \$381.1million; FY 2001-02 - \$342.0 million; and FY 2002-03 - \$353.6 million.

** Refund requests cover the following dates: August 1997 through March 2004.

The fiscal impact for both state and local governments of declaring that complimentary rooms provided through the hotel rewards points program are not taxable, could be ameliorated if the interpretation that tax is due on the total rent charged customers by the Internet intermediary for a hotel room instead of on the discount rate paid by the Internet intermediary to the hotels is adopted. Just a 1 percent increase in tourist development taxes as a result of Internet intermediaries remitting tax on the total rent charged the customer for the hotel room instead of on the discount rate, could realize an increase in overall tourist development taxes to local governments, even given the loss of tax on complimentary rooms. Like wise, the state could also realize an increase in state sales tax collections.²⁸

²⁸ \$492.2 million was collected in FY 2002-03 in sales tax on transient rentals.

Appendixes

Appendix A – Department of Revenue Survey of States: Taxation of Transient Rentals and the Internet Reservation Company

State	Tax Transient Rentals?	Position and Form	Legislation
Alabama	Yes - not in sales tax, but have separate lodgings tax	No - aware and have discussed it	No
Alaska	No state tax. Local tax authorized	Not aware of any position on the issue.	No
Arizona	5.6% Transaction Business Tax imposed on business owner. Local tax authorized. Rates vary.	Tax is imposed on the discount rate. Have looked at issue. Current statute on transient lodging provides that tax due on hotel operators' gross receipts. Title 42.	Not aware of any
Arkansas	Yes - 26-52-301, tax on gross receipts. Local tax also.	No - not aware	No
California	No state tax. Local tax authorized. State does not administer.	No - not aware of what locals are doing	No
Colorado	Yes - § 39-26-102(11) - on "sale." Local tax authorized.	Currently tax discount rate, but in the process of writing a Letter of Ruling on the issue. Leaning towards ruling that tax due on cost of room to customer. Can see nexus problems. Will provide copy of Letter Ruling when completed.	No
Connecticut	Yes. Room occupancy tax. Section 12-407(a)(2)(H). No local tax authorized.	No - but "gut sense" was that CT would tax markup under definition of "rent."	Not aware of any
Delaware	Yes. Public Accommodations Tax. Title 30, s. 6102. Local tax authorized. Wilmington.	No	No
DC	Yes - § 47-2001	No - issue came up once	No
Georgia	Yes OCGA 48-8-2 def. of sale. Locals self administer.	Tax due on discount rate. Statutes impose tax on value of room sold by hotel. Issue discussed. Law change necessary to tax total rate paid by customer. Nexus problems.	No
Hawaii	Yes. HRS § 237D-2. No local tax authorized.	No - HRS § 237D-1-02 definition of "gross rentals" should preclude taxing markup.	No
Idaho	Yes. § 63-3619; definition of "sale" in 63-3612. Local tax authorized. Currently 2 plus 6 city resort taxes.	No - but aware of issue.	No

Appendix A – Department of Revenue Survey of States: Taxation of Transient Rentals and the Internet Reservation Company

State	Tax Transient Rentals?	Position and Form	Legislation
Illinois	Yes. State and local (county, city, special districts) level. 35 ILCS 145.	Aware of issue and currently studying it.	No
Indiana	Yes, sales tax at state level. Section 6-2.5-4-4. Also county level innkeeper's tax.	Unaware of issue but believe tax is on the hotel and only discount rate would be taxed.	None
Iowa	Yes, 18.40 in Rules and Regulations. State and local.	Unaware and unconcerned. Thinks they could make Internet company register and collect. Reluctantly agreed there might be nexus issues.	None
Kansas	Yes. § 79-3603 sales tax. Local transient guest tax administered by state. 12-1694 and 12-1698.	No - kind of aware.	No
Kentucky	Yes. K.S. 139.100 and 139.050. State tax on receipts received for accommodations.	Aware of issue. No formal position. Believes they would try to tax markup, but sees nexus problems.	None
Maine	Yes. Title 36, s. 1811 (imposition), s. 1752 (defines living quarters)	Aware of issue, no official position. Believes additional \$ to Internet company would be commission.	None
Maryland	Yes, state and local level. Annotated Code of Maryland, Tax-General Article, 11-101(i)(ii)	Unaware of issue but interested.	None
Massachusetts	Ch 64G of the General Laws imposes state and local. All state administered.	No official position	Yes. Proposal was removed from bill in Conference Committee and sent to committee for study.
Michigan	Yes 6% use tax on hotel accommodations. MCL 205.93a and Rule 38.	No official opinion. Discussed internally. Tentative approach is that companies are doing business in Michigan rather than acting as hotel agents and that tax is based on price paid to Internet company. No apparent concern with nexus issues.	None
Minnesota	Yes. State and local. Some locals self-administer. Minn. Stat Ch 297A.61(3)(g)2.	No official position. Studying the issue and surveying states.	None

Appendix A – Department of Revenue Survey of States: Taxation of Transient Rentals and the Internet Reservation Company

State	Tax Transient Rentals?	Position and Form	Legislation
Mississippi	Yes. State and local. Section 27-65-23.	No official position that respondent is aware of.	Not aware of any
Missouri	Yes, state and local level tax on service of renting rooms. S.144.020, Revised Statutes.	Unaware of issue	Not aware of any
Montana	4% Lodging Facility Use Tax. 3% Lodging Facility Sales Tax. No local tax.	Tax is imposed on the discount rate, not on markup or fees. MCA 15-65-11.	Not aware of any
Nebraska	5.5% Sales Tax in Chapter 77-2701.33. Lodging tax at local level under Ch. 81-2153.	Aware of issue. No official position,	No
Nevada	Lodging Tax -- imposed at local level.	Nevada has not addressed this issue.	Not aware of any
New Hampshire	8% Meals and Rental Tax. No local tax.	Current policy is that tax is imposed on the discount rate, not on markup or fees. New Hampshire is currently investigating the issue and has not issued any official opinion.	Not aware of any
New Jersey	6% Sales Tax. 7% Occupancy Fee. 1% Municipality Tax.	Tax is imposed on the discount rate, not on markup or fees. S. 78A and Rule 700.	Not aware of any
New Mexico	1-5% Local Lodgers Tax. 5.125% - 7.125% State Gross Receipts Tax.	Taxing structure imposes the tax on the business owner so this may not be an issue for New Mexico.	Not aware of any
New York	S. 1101(c), 1105, 1131 Tax Law. State and local sales tax. Local bed taxes self-administered.	Per Advisory Opinion TSB-A-04(6)S, neither Internet company nor hotel is required to collect and remit on markup. Opinion does not determine whether the guest owes tax on that amount. Advisory Opinion TSB-A-97(58)S involved a hotel with a wholly owned booking agency.	None
North Carolina	4.5% Sales Tax. 2.5 % Local Option Tax. 0-5% Local Occupancy Tax.	Looks to contract between the Internet company and the hotel. If Internet company is a reseller, tax is imposed on the total consideration paid by the guest. If Internet company is not a reseller, tax is imposed on the discount rate paid by the Internet company. There is no published guidance on this.	Not aware of any
North Dakota	5% Sales Tax. 1% Lodging Tax. Also local lodging tax, city sales tax, city lodging tax, and city restaurant tax.	No official position. North Dakota has not addressed this issue yet.	Not aware of any

Appendix A – Department of Revenue Survey of States: Taxation of Transient Rentals and the Internet Reservation Company

State	Tax Transient Rentals?	Position and Form	Legislation
Ohio	6% Sales Tax on Lodging. 0-3% Local Option Lodging Tax.	Ohio has not yet made a decision on this issue and nothing has been published.	Not aware of any
Oklahoma	Yes, state sales tax under Title 68-1534. Local tax administered by state. Locals are authorized to impose an additional room tax, which cities self-administer.	No official position.	None
Oregon	Yes, 320.300-320.350	Aware of issue from MTC. No official position.	None
Pennsylvania	6% state & local hotel occupancy tax imposed on "person operating a hotel." Local tax in only 2 counties, state administered. Article 2, Title "Sales Use & Hotel Occupancy Tax." Reg. 38.1.	Tax due on what the Internet company pays the hotel for the room. Restrained by definitions in law. Considered a non-issue.	None
Rhode Island	7% Use Tax. 5% Hotel Tax on 1st 30 days. Title 44-18-30 for taxing transient rentals.	Position appears to be to tax the discounted rate between the dot.com and the hotel. Nothing formally published.	Not aware of any
South Carolina	Transient Accommodations Tax (7% state, 0-3% local). Section 12-36-920, 12-36-2630.	Apparent position is to tax the discounted rate between the Internet company and the hotel. Contact does not believe anything has been published.	Not aware of any
South Dakota	4% Sales Tax; 0-2% City Tax; 1% City Gross Receipts Tax; 1% Tourism Tax.	Tax is imposed on the discount rate, not on markup or fees.	Not aware of any
Tennessee	7% sales tax; 1.75-2.75% local tax; 3-5% local hotel/motel tax. TCA 67-6-102(25)(F).	Tax liability falls on the hotel. If the dot.com pays the hotel, that is the transaction that is taxed.	None
Texas	State and local hotel tax. Local tax self administered. Section 156.051.	Yes – opinion letters and Tax Policy News 10/2002. Depends on the contract. If the Internet company is a reseller (sets price, has own cancellation policy, controls who uses the rooms), tax is due from that company on the markup. If the Internet company is merely an agent, the markup is a commission and no tax is due on it.	None
Utah	State and local hotel tax. Local tax self administered. Sections 59-12-301, 59-12-352.	No official position. Looked at it in the limited context of the Winter Games and decided not to pursue it.	None

State	Tax Transient Rentals?	Position and Form	Legislation
Vermont	"Meals and Rooms" Tax. Ch. 225 VSA section 9202. Local tax authorized.	No official position -- aware of the issue and "about one year probably from addressing" it.	None
Virginia	State & Local. Section 58.1-603.	No position but aware of issue.	None
Washington	State and local sales tax. Section 82.04.50(2)(f).	No position. Not aware of issue.	None
West Virginia	Yes. Rentals of less than 30 days are taxable.	Unaware of issue -- "not on radar screen."	None
Wisconsin	Transient rental tax is imposed on stays of less than 30 days. State tax plus 1 local tax. Wis. Stat. 77.52(2).	The tax due on the full retail price to the guest. If Internet company can be found to have nexus, the company can be required to collect and remit on the full retail price. A resale certificate would be issued to the hotel. If the Internet company does not collect, the guest would have a use tax liability.	No, but looking at something on issue
Wyoming	Yes. Tax is due when the customer enjoys the service. Section 39-15-101.	Unaware of issue except in context of streamlining. Will be looking at it now.	None

Questions asked by the Department of Revenue:

1. Does your state tax transient rentals?
2. If yes, what is the statutory cite?
3. Are local governments also authorized to impose such a tax on transient rentals?
4. Are you aware of the Internet hotel room reservation issue?
5. If yes, has your state taken an official position on the issue?
6. If yes, what form is the position in (i.e. statute, rule, regulation, letter ruling) and can I get a copy of it?

Have there been any legislative proposals on this issue?

Appendix B – Department of Revenue LTA 02A-740

July 24, 2002

Elizabeth Burton
Grant Thornton
700 One Prudential Plaza
130 East Randolph Street
Chicago, Illinois 60601-6164

Re: Letter of Technical Advice 02A-740
Taxability of Hotel Reward Points Redemption
Sections 125.0104, 125.0108, 212.03, 212.0305, F.S.

Dear Ms. Burton:

This Letter of Technical Advice is in response to your correspondence of May 22, 2002, regarding the above referenced matter.

FACTS

Your letter sets forth the following facts:

The taxpayer is a Delaware company that owns and operates hotels nationwide. A number of these hotels are located in Florida.

Taxpayer has a marketing program[,] which is designed to encourage the public to stay at its hotels on a regular basis. The program gives frequent customers reward points when they stay at one of the taxpayer's hotels. These points can be exchanged for free lodging or free upgrades (to suites or a concierge floor). The points have no dollar value to the individual receiving them. They cannot be sold by the recipient on the open market, nor can they be exchanged with the hotel for money.

All of the taxpayer's hotels, whether owned or franchised, are required to participate in this marketing program by terms of their management agreement. Each hotel pays approximately 4% of room revenues from the guests who are members of the marketing program into a central fund every month.

This fund is not a separate legal entity. It is a segregated bank account, maintained under the name of [Taxpayer] as Agent for the Hotels Owned, Leased, Operated, Managed or Franchised by It, Its Subsidiaries, And/Or Affiliates. The fund is managed by a separate staff of [taxpayer's] employees. The cost of administering the fund comes out of the revenues contributed by each hotel. The hotel's account is credited a certain amount when reward points are used at their hotel for a night's stay. The hotel's account is not credited a certain amount when the reward point are used for upgrades. The credit the hotel receives is a credit of its own money[,] which offsets the money that it is spending for the marketing program. The

money held by the fund is considered to be held on behalf of the individual hotels in proportion to their payments to the fund. Each hotel has a balance in the fund directly related to its contributions and credits.

Each hotel is compensated for redemptions based on the daily total occupancy for each day of the award stay. Award compensation is reported via e-mail to hotels the third week of each month. The compensation report reflects all awards redeemed at that hotel for the prior month. Total award compensation for the month will be subtracted from the Assessment Invoice total in order to determine the net amount due for the month. In instances where compensation is greater than the amount owed by the hotel to the fund for the month, the amount will be applied to the hotel's account.

All reservations using reward points and issuance of free room certificates or confirmation number [are] handled by the fund. No guest can make arrangements directly with the individual hotel. When the guest checks into the hotel, the guest will provide the hotel with a certificate for free accommodations or[,] in lieu of paper, the reservation's confirmation number.

REQUESTED ADVISEMENT

The following questions are posed in your correspondence:

1. Is the compensation received by the individual hotel from the fund subject to Florida sales or use tax?
2. Is the exercise of the right to a free stay in a Florida hotel subject to Florida sales or use tax?
3. Is the exercise of the right to a free stay in a Florida hotel subject to local hotel occupancy tax?
4. If items 1 or 2 are affirmative, does this not violate the Florida statutes that prohibit duplication or pyramiding of tax?

APPLICABLE STATUTES AND RULES

Section 212.03(1), Florida Statutes, generally imposes tax on transient rentals. Section 212.03(4), Florida Statutes, states in pertinent part that “. . . no tax shall be imposed upon rooms provided guests when there is no consideration involved between the guest and the public lodging establishment.”

Counties that impose tourist development tax, tourist impact tax, or convention development tax on the rental of transient accommodations are bound by the rules of the Department of Revenue concerning taxation of transient rentals, as well as by the provisions of section 212.03, Florida Statutes. See Sections 125.0104(10), 125.0108(2)(a), and 212.0305(5)(c), Florida Statutes.

DETERMINATION

Section 212.03(4), Florida Statutes, expressly prohibits the imposition of tax on rooms when there is no consideration between the guest and the hotel. Therefore, even though the hotel may receive some reimbursement for lost revenue or expenses from a central fund, this reimbursement does not constitute consideration from the guest.

There is no tax (state or local) on the free rooms provided to/redeemed by guests, or on the compensation from the central fund for the use of those rooms.

This response is based upon the facts and circumstances of your specific situation, as presented, and is not an official statement or opinion of this department but, instead, represents the opinion of the writer. If you wish an official binding statement on this issue, you may file a written request for a Technical Assistance Advisement by following the provisions of the department's Rule 12-11, F.A.C., a copy of which is enclosed. The request for a Technical Assistance Advisement should be sent to the Office of the General Counsel, Technical Assistance and Dispute Resolution, Florida Department of Revenue, P.O. Box 7443, Tallahassee, Florida, 32314-7443.

If you have further questions with regard to this matter and wish to discuss them, you may contact our Technical Assistance Section, 850/414-9838. If you have specific questions and would like a written response, the request should be sent to the Office of the General Counsel, Technical Assistance and Dispute Resolution, Florida Department of Revenue, P.O. Box 7443, Tallahassee, Florida, 32314-7443.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Sara D. Faulkenberry
Tax Law Specialist
Technical Assistance and Dispute Resolution

Control # 50434

Appendix C – Department of Revenue LTA 03A-824

September 12, 2003

Keith Staats, Director –State and Local Tax
Grant Thornton
175 West Jackson Boulevard, 20~ Floor
Chicago, Illinois 60604

Re: Letter of Technical Advice 03A-824
Taxability of Hotel Reward Points Redemption
Sections 125.0104, 125.0108, 212.03, 212.0305, F.S.

Dear Mr. Staats:

This Letter of Technical Advice is in response to your correspondence of August 21, 2003, regarding the above referenced matter. A Letter of Technical Advice is being issued, since your correspondence does not contain the required information, as set forth in Rule 12-11.003, Florida Administrative Code, for the issuance of a Technical Assistance Advisement.

FACTS

Your letter sets forth the following facts:

The taxpayer is a group of companies under common ownership that files a consolidated federal income tax return (collectively the “Taxpayer”) that manages and franchises hotels worldwide under certain name brands. A small number of these hotels are also owned by the Taxpayer. A number of these hotels are located in Florida.

Taxpayer has a marketing program (the “Program”) that is designed to encourage frequent travelers to prefer its hotels over competing brands. Members of the Program can earn reward points when they stay at one of Taxpayer’ [s] branded hotels. These points can be redeemed for free lodging, travel, merchandise or other rewards.

All of Taxpayer’s hotels, whether owned, managed or franchised, are required to participate in this marketing program by the terms of their management or license agreement. Each hotel pays the Program the cost of the points earned at the hotel each accounting period. That cost varies between 1.75% and 4.5% of qualified eligible room revenues received from members of the Program.

The Program is administered by the Taxpayer through its wholly-owned subsidiary (“Rewards”). All of the associates who manage the Program, including its marketing, accounting and redemption

functions are employees of Rewards, or the costs associated with these activities are paid for by Rewards. All costs of the Program are funded out of the fees paid by the participants.

When the member wishes to redeem the award for lodging, the member will provide the hotel with a certificate issued by the Program indicating that the member is entitled to the specified stay in the hotel, or alternatively, the reservation's confirmation number. When the Program obtains lodging on behalf of the member, the hotel is credited a contractually agreed upon amount....

The Program is a marketing tool used by the Taxpayer to encourage guests to make repeat visits to hotels operating under its brands and thus increase the total revenues collected by the hotels. The members of the Program are rewarded with points when they stay at these hotels. They can use these points at any of Taxpayer's hotels for a free stay or an upgrade or for other awards. Each hotel is credited a certain amount when Program points are redeemed at that hotel.

The hotel does not receive consideration from the guest (upon redemption of a reward). The guest redeems his Program points at a central location and receives a free room. The points are worthless on the open market as they may be redeemed only by the guest. They have been earned by the guest's loyalty to the Taxpayer's hotels. Members can accumulate points and exchange points for a free room....

...[W]hen guests redeem points for a free stay, they receive a certificate in the mail or an electronic ticket. When the guest checks into the hotel, the guest will provide the hotel with a certificate for free accommodations. In lieu of paper, the guest may receive a reservation confirmation number to present to the individual hotel. Thus, no consideration is involved between the guest and the particular hotel in which he or she stays. ...

REOUESTED ADVISEMENT

The request poses the following questions:

1. Is the compensation received by the individual hotel from the Program subject to Florida sales or use tax?
2. Is the exercise of the right to a free stay in a Florida hotel subject to Florida sales or use tax?
3. Is the exercise of the right to a free [stay] in a Florida hotel subject to local hotel occupancy tax?
4. If items 1. and 2. are affirmative, does this not violate the Florida statutes that prohibit duplicating or pyramiding tax?

APPLICABLE STATUTES AND RULES

Section 2 12.03(1), Florida Statutes, generally imposes tax on transient rentals. Section 212.03(4), Florida Statutes, states in pertinent part that "...no tax shall be imposed upon rooms provided guests when there is no consideration involved between the guest and the public lodging establishment."

Counties that impose tourist development tax, tourist impact tax, or convention development tax on the rental of transient accommodations are bound by the rules of the Department of Revenue concerning

taxation of transient rentals, as well as by the provisions of section 212.03, Florida Statutes. See Sections 125.0104(10), 125.0108(2)(a), and 212.0305(5)(c), Florida Statutes.

DETERMINATION

Section 212.03(4), Florida Statutes, expressly prohibits the imposition of tax on rooms when there is no consideration between the guest and the hotel. Therefore, even though the hotel may receive some reimbursement for lost revenue or expenses from Rewards, this reimbursement does not constitute consideration from the guest.

There is no tax (state or local) on the free rooms provided to/redeemed by guests, or on the compensation from Rewards for the use of those rooms.

This response is based upon the facts and circumstances of your specific situation, as presented, and is not an official statement or opinion of this department but, instead, represents the opinion of the writer. If you wish an official binding statement on this issue, you may file a written request for a Technical Assistance Advisement by following the provisions of the department’s Rule Chapter 12-11, F.A.C., a copy of which is enclosed. The request for a Technical Assistance Advisement should be sent to the Office of the General Counsel, Technical Assistance and Dispute Resolution, Florida Department of Revenue, P.O. Box 7443, Tallahassee, Florida, 32314-7443.

If you have further questions with regard to this matter and wish to discuss them, you may contact our Technical Assistance Section, 850/414-9838. If you have specific questions and would like a written response, the request should be sent to the Office of the General Counsel, Technical Assistance and Dispute Resolution, Florida Department of Revenue, P.O. Box 7443, Tallahassee, Florida, 32314-7443.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Sara D. Faulkenberry
Tax Law Specialist
Technical Assistance and Dispute Resolution

Control # 56603

Appendix D – Department of Revenue LTA 03A-699

August 4, 2003

Bert Gerez, Tourist Development Tax Auditor
Monroe County Clerk of the Circuit Court
Attn: Internal Audit
P.O. Box 1980
Key West, Florida 33041-1980

Re: Letter of Technical Advice 03A-699
Taxation of Hotel Reward Points
Sales and Use Tax
Sections 212.03(1) and (4), 125.0104(10), 125.0108(2)(a), and 212.0305(5)(c), F.S.

Dear Mr. Gerez:

Thank you for your letter dated June 26, 2003, regarding the possible tax consequences of hotel reward points.

Stated Facts and Requested Advisement

Your letter states in part:

... XXXXXXXXXXXXX, ... and the XXXXXXXXXXX, ... , [hereinafter Taxpayers], through their representative XXXXXXXXX, Accountants and Management Consultants, have filed for a refund of Monroe County Tourist Development Taxes that they claim were paid in error. The erroneous taxes paid represented tax on reward point credits earned at each hotel. [T]axpayer[s]' representative stated that the hotel did not file for a refund with the Florida Department of Revenue, but instead took a tax credit on subsequent Florida Sales and Use Tax Returns.

Our auditors conducted a tourist tax compliance audit at the two hotels to verify the refund amounts claimed. We learned that both hotels are required to participate in a nationwide reward points program that encourages the traveling public to stay at [the] hotel[s]. There are no costs to the guest to join the program. Participating members accumulate points with each stay that can be exchanged later for free nights, free flights, free upgrades, etc. [information on the reward point program was attached]. We found no exchange of consideration for reward points between guest and hotel.

Each participating hotel is charged a percentage of their monthly room revenues by the program administrator and in return the hotel receives credits from the administrator for reward points used by [the] guest at their location. Both hotels maintained separate general ledger accounts to track reward points and included reward points revenue when reporting taxable room revenue on the Florida Department of Revenue Tax Returns and Monroe County Tourist Development Tax Returns.

Are the reward point credits received from the central office by the hotels subject to Florida Sales and Use Tax? Monroe County Tourist Development Tax?....

Applicable Authority and Discussion

Section 212.03(1), F.S., generally imposes tax on transient rentals. Section 212.03(4), F.S., states in pertinent part that " ... no tax shall be imposed upon rooms provided guests when there is no consideration involved between the guest and the public lodging establishment."

Counties that impose tourist development tax, tourist impact tax, or convention development tax on the rental of transient accommodations are bound by the rules of the Department of Revenue concerning the taxation of transient rentals, as well as by the provisions of Section 212.03, F.S. See Sections 125.0104(10), 125.0108(2)(a), and 212.0305(5)(c), F.S.

Section 212.03(4), F.S., expressly prohibits the imposition of tax on rooms when there is no consideration between the guest and the hotel. Therefore, even though the hotel may receive some reimbursement for lost revenue or expenses from a central fund, this reimbursement does not constitute consideration from the guest.

There is no tax (state or local) on the free rooms provided to or redeemed by the guests, or on the compensation from the central fund for the use of those rooms.

This response is based upon the facts and circumstances of your specific situation as presented and is not an official statement or opinion of this Department but, instead, represents the opinion of the writer. If you wish an official binding statement on these issues, you may file a written request for a Technical Assistance Advisement by following the provisions of the Department's Rule Chapter 12-11, F.A.C., a copy of which is enclosed. The request for Technical Assistance Advisement should be sent to the Office of General Counsel, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida, 32314-7443.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 488-9669. If you have specific questions and would like a written response, the request should be addressed to the Office of the General Counsel, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida, 32314-7443.

Sincerely,

Tammy S. Manke
Attorney
Technical Assistance & Dispute Resolution
TSM/
Control No: 55906

Appendix E – Letter from Usher L. Brown of Brown, Salzman, Weiss & Garganese, P.A. on Behalf of Orange County, Florida

BROWN, SALZMAN, WEISS & GARGANESE, P.A.

Attorneys at Law

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Erin J. O'Leary
Of Counsel

April 1, 2004

VIA FACSIMILE

Martha O. Haynie, Comptroller
Office of the Comptroller
201 S. Rosalind Avenue
Orlando, FL 32801

COPY

K. Kaye Collie
General Counsel
Office of the Comptroller
201 S. Rosalind Avenue
Orlando, FL 32801

**Re: Application of Tourist Development Tax to Hotel Reward Point Programs
Our File No. 0141**

Dear Ms. Haynie and Ms. Collie:

This correspondence addresses the question of whether or not the use of reward points to secure short-term lodging is "consideration" subject to the Tourist Development Tax (TDT). I conclude that the use of reward points in consideration of lodging constitutes a taxable event when the reward point program grants a credit to the hotel when the points are redeemed.

Reward Point Program. In correspondence supporting their position, the taxpayers (various hotel organizations) describe the reward point system as a marketing program designed to encourage continued business and brand loyalty. The program awards points to participating customers when they stay at one of the taxpayers' branded properties. With some, but not all of the programs, the guest may use the points for upgrades or discounts on retail purchases. All of the programs provide for the redemption of points in consideration of short term occupancy at the subject hotel properties.

The programs differ structurally. One of the identified taxpayers has formed a subsidiary corporation for purposes of administering the program, whereas others merely opened a separate account for the administration. All of the taxpayers ultimately are responsible to fund the cost of administering the program, whether the program fund is a separate legal entity or not. Of the greatest significance to my analysis is the fact that each taxpayer requires each of its branded hotels to mandatorily contribute a percentage of room revenues received from the guests who participate. These required payments are made to the central program fund on a monthly basis. When a customer redeems the points in consideration of lodging at a hotel, that hotel receives a credit against the monthly obligation to fund the program account. Grant Thornton explains in one of its letters to the Comptroller, if the amount of credit to a hotel, exceeds the amount due from that hotel to the program account in any particular month, the credit is carried forward and applies against that hotel's obligation to pay in the following month.

The taxpayers contend that the points are used to obtain a "free" room in the future, and are not redeemed with the hotel, but instead are redeemed through the central reward point program administrative office. Thus, the taxpayers argue, there is no taxable consideration to the hotel because the stay is "free." They additionally contend there is no transfer of value between the customer and the hotel because the customer redeems directly with the central reward point administrator.

General Principles of TDT. "Every person who rents, leases or lets for consideration any living quarters or accommodations in any hotel . . . for a term of six months or less is exercising a privilege which is subject to taxation," unless the transaction is exempt under the provisions of Chapter 212. Section 125.0104 (3)(a), *Florida Statutes*. The tax is computed on the total consideration paid for the right of occupancy. *Florida Administrative Code*, Rules 12A-3.006(2); 12A-1.061(3). It is the intent of the Florida Legislature to tax each and every rental unless it is specifically exempt. Section 212.21 (2), *Florida Statutes*. The tax is paid on the "total rental charge" with no deductions, except to the extent the transaction is expressly exempted. *Florida Administrative Code*, Rule 12A-1.061(1). See also, Section 212.03(1), *Florida Statutes*.

There must be consideration transferred for the right to use or occupy the room in order to subject the transaction to TDT, and the provision of a truly free room, when there is "no consideration involved between the guest and the public lodging establishment" is not a taxable transaction. Section 212.03(4), *Florida Statutes* (providing that no tax is imposed on rooms provided to guests without consideration "involved between the guest" and the hotel.) However, Rule 12A-1.061(3) defines the taxable consideration to include "credits" and "anything of value." Moreover, the TDT is due on any portion of taxable consideration paid to an agent of the hotel. See, e.g., TAA97(A)-066 (Agent selling cars is a dealer responsible to collect and remit sales tax, but if the agent fails to perform this duty as required, the consignor, as principal is still liable for the tax). See also, Rule 12A-1.060(3) (agent receiving rental consideration is a "dealer"); Section 212.03(2) (any "person receiving the rent shall remit the tax").

Analysis and Discussion. A two-step analysis is appropriate in resolving this question. The first step is to address whether or not there is consideration paid by the patron for lodging at the hotel when reward

points are used. If there is consideration paid, the second question is whether or not the consideration is "involved between the guest and the public lodging establishment." Section 212.03(4).

It is axiomatic that generally the courts do not inquire into the adequacy of consideration. *See, e.g., Bayshore Royal Co. v. Doran Jason Co.*, 480 So.2d 651, 656 (Fla. 2nd DCA 1985). Consideration to support a transaction may be so slight or ephemeral, that even the promise to forebear from exercising a right that one does not own is sufficient consideration to support a contract, so long as the one who forebears from enforcing the nonexistent right in good faith believes he has the right at the time he contracts. *Alpha Electric Supply Corporation v. Drake Contracting, Inc.*, 407 So.2d 363 (Fla. 5th DCA 1981). Consistent with these principles regarding the definition and adequacy of consideration, the Florida Department of Revenue, in Rule 12A-1.061(3) has included within the scope of taxable consideration anything of value, including credits.

Section 21 2.21 (2) expresses the intent of the Florida Legislature to tax each and every rental, unless it is specifically exempt. Moreover, the total consideration, including payment by "credits" or "other things" of value is subject to the tax. Rule 12A-.061(2)(e) and (3). In construing tax statutes, the primary consideration is to ascertain and give effect to the Legislature's intent, determined principally from the language of the statute. *Miele v. Prudential - Bache Securities*, 656 So.2d 470 (Fla. 1995). Statutes and rules should be interpreted as they are written and effect should be given to each word. *Florida Department of Revenue v. Florida Municipal Power Agency*, 789 So.2d 320, 324 (Fla. 2001). Thus, when the language of a statute or rule is clear and unambiguous "the statute must be given its plain and ordinary meaning." *Metro Dade County v. Milton*, 707 So.2d (Fla. 3rd DCA 1998). Words of common usage, when employed in a statute or administrative rule should be construed in their plain and ordinary sense. *Zuckerman v. Alter*, 615 So.2d 661, 663 (Fla. 1993).

In construing TDT, any exception or exemption is to be strictly construed against the taxpayer. *Department of Revenue v. Kemper Investors Life Insurance Company*, 660 So.2d 1 124, 1 127 (Fla. Ist DCA 1995). *See also, State ex re1 Szabo Food Senv., Inc. of N.C. v. Dickinson*, 286 So.2d 529 (Fla. 1973); *Department of Revenue v. Skop*, 383 So.2d 678 (Fla. 5th DCA 1980). The authority to tax the consideration for short-term rental is clear; the burden to show that a particular transaction is exempt or excepted from the tax falls on the taxpayer. *See, Dept. of Revenue v. Val-Pak Direct Marketing*, 862 So.2d 1, 5 (Fla. 2d DCA 2003).

When the Legislature and DOR enact statutes and rules that specify the tax is due on the "total" amount of the "consideration," including "other things of value" and "credits," we should presume that these authorities understood the plain and ordinary meaning of these words. *Hankey v. Yarian*, 755 So.2d 93, 96 (Fla. 2000); *Aetna Casualty and Surety Company v. Huntington National Bank*, 609 So.2d 131 5, 131 7 (Fla. 1992). *See also, Florida v. Riscorp Inc. Co.*, 2004 WL 502901 (1st DCA 2004). Reference to a dictionary is permissible, if necessary, to determine the meaning of these terms. *L.B. v. State*, 700 So.2d 370,372 (Fla. 1997); *Dept. of Revenue v. Val-Pak Directing Marketing*, supra, 862 So.2d at 4-5; *Green v. State*, 607 So.2d 471, 473 (Fla. 1992).

Webster's New World Dictionary (Third College Edition) defines "value" with several semantic variations. One definition is "purchasing power"; another definition is "the worth of a thing in ... goods at a

certain time." Black's Law Dictionary (Sixth Edition) defines "consideration" in relevant part to mean, "Some right ... accruing to one party, or some forbearance ... or responsibility, given ... or undertaken by the other." *Citing, Restatement 2nd Contracts*. Another definition of "consideration" in Black's is, "The cause, motive, price or impelling influence which induces a contracting party to enter into a contract." Black's defines "credit" in relevant part as, "The correlative of a debt; that is, a debt considered from the creditor's standpoint or that which is incoming or due to one. That which is due to a person as distinguished from debit, that which is due by him."

Applying these principles and definitions to the facts, as represented, it is my opinion that the reward points are redeemed as consideration for the lodging. The hotels are required by the reward point programs to contribute money periodically to a central reward point program fund. This is a debt due from the hotels to the reward program account. When a customer redeems points in consideration of the lodging, the hotel where that customer stays by virtue of the redemption receives a benefit (or value) in the form of a credit against the hotel's debt obligation to the program's account. This reduction of the hotel's debt is both the use of "credits" and something of "value" in consideration of short-term rental accommodations, and this consideration is made expressly subject to the tax in DOR Rule 12A-I,061 (3).

The companies have concluded that the maintenance of reward point programs are valuable in establishing and maintaining brand loyalty. As a condition of maintaining affiliation with the brand, each property is required to fund the reward point program. It is understandable that there are significant administrative costs, marketing expenses and other operational expenditures that are required in order to establish, promote and maintain a credible reward point program of a national (and probably international) scope. To support this significant endeavor, each property is indebted on a contractually established basis to fund the reward point program account pursuant to a prearranged formula. There is an obvious benefit in favor of a hotel when a guest redeems points to stay at the hotel. This value can be measured in dollars because there is a predetermined formula, according to the information submitted by the accountant on behalf of the taxpayers, that determines the amount of credit the hotel may take against its obligation to pay into the program on a monthly basis. To put it even more simply, if no customer redeems points to stay at a particular property, that hotel will pay the maximum amount it is contractually obligated to pay into the program fund. To the extent customers redeem points to stay at that property, that amount that it owes on a monthly basis is correspondingly reduced pursuant to a formula that is established and imposed on the participants in the program. Therefore, where the amount of debt reduced by the redemption of points is known, the tax may be computed by such dollar figure, on the other hand, where the dollar figure is unknown the tax would be computed, in accordance with Section 125.01 04(3)(c), Florida Statutes, based upon the fair market value of the room let.

The value that is received by the hotel is extinguishment of a debt that is otherwise owed. There are analogous authorities in tax law that hold that the extinguishment of debt is a taxable event. For example, 26 U.S.C. Section 61 (a) provides in part that "gross income" means all income from whatever source derived, including "income from discharge of indebtedness ..." Additionally, the U.S. Supreme Court has held that where a corporation purchases and retires its bonds at a price less than the issuing price or face value of the bonds, the excess of the issuing price or face value over the purchase price is taxable gain or income to the corporation. *United States v. Kirby Lumber Company*, 284 U.S. 1 (1931). *See also*, 7 A.L.R. 2d 871 (1949), "Income Tax: Cancellation of Debt Upon Payment of Less than Amount Due." When an

employer pays income taxes assessed against its employee, such amount is held to constitute additional taxable income to the employee. *Old Colony Trust Company v. Commissioner of Internal Revenue Service*, 279 U.S. 716 (1929). If a loan is discharged rather than repaid, then income is attributable to the borrower who has had the debt discharged on his behalf. *Twenty-Mile Joint Venture v. Commissioner of Internal Revenue Service*, 200 F. 3rd 1268 (1st Cir. 1999).

The redemption of the reward points at issue results in a cancellation of indebtedness that the hotel is obligated to pay to the reward point fund. Such cancellation of or credit against indebtedness is included within the gross receipts that are subject to taxation. *Vukasovich, Inc. v. Commissioner of Internal Revenue Service*, 790 F. 2d 1409 (9th Cir. 1986) (holding that the \$37,000 which a taxpayer gained by a cancellation of indebtedness was "income" within the meaning of the statute defining gross income).

Having reached the conclusion that the redemption of reward points is of value, and results in a credit in favor of the hotel, thereby reducing the amount of debt the hotel otherwise owes the reward point program, I now address the second question. The statute, Section 212.03 (4) states in pertinent part that "no tax shall be imposed upon rooms provided guests when there is no consideration involved between the guest and the public lodging establishment." The taxpayer takes the position that the reward points are redeemed through the central program authority and therefore no consideration passes between the hotel and the guest.

This argument ignores the fact that TDT is assessed when the consideration is received by an agent of the property owner. *See, e.g.,* Section 212.03(2) (any "person receiving the rent shall remit the tax"); *Florida Administrative Code*, Rule 12A-1.060(3) (agent receiving rental consideration is a "dealer" for the tax); TAA97(A)-066. The definition of "dealer" includes an agent appointed to represent the owner of a property. Section 21 2.06 (2)(j), *Florida Statutes*, defines "dealer" to include any person who grants a license to use accommodations in hotels. The program administrator acts as an agent for the hotel, and thus is a dealer granting a license to occupy the room, and is responsible to collect and remit the tax. If the agent fails to remit, the principal of the agent (i.e., the hotel) is liable. TAA 97(A)-066. To avoid the tax merely by running the program through a subsidiary or affiliate violates the rule that in questions of taxation it is the substance of the transaction that governs, and one should ignore the formal structure when the form is at variance with the substance. *American Tel. and Tel. Co. v. Florida Dept. of Revenue*, 764 So.2d 665 (Fla. 1st DCA 2000). Lastly, despite the taxpayers' tortured construction, a reasonable interpretation of the statute will find there is consideration directly flowing between the customer and the hotel, because the redemption of the points, (whether through an intermediary or not) results in a direct benefit to the property (i.e., an extinguishment or reduction of a debt otherwise owed by the hotel). And, it is the guest who chooses to redeem his valuable points for a "license" (or right) to stay at a particular hotel.

Conclusion. It is my opinion that the reward point programs, as currently structured, provide for the transfer of consideration to a hotel when points are redeemed and used for lodging at the particular property. The hotels have debts to the program that are reduced by reward point redemptions. Thus, the use of the points results in a transfer of value or consideration. This is distinguishable from a hypothetical scenario in which a hotel gives a free room to a customer to inculcate goodwill in the brand name. In the hypothetical circumstance of a room given for free, the hotel would receive no reduction or extinguishment of a debt.

Please feel free to contact me should you wish to discuss these matters further, and feel free to share this correspondence with persons who have an interest in this subject.

Sincerely,

Usher L. Brown

Appendix F – Hotel Rewards Points Refund Requests for Counties With TDT Collections in Excess of \$10 Million For Fiscal Year 2002-03

Broward County Refund Requests

Source of Refund Request	Hotels	Amount of Refund Request	Date Covered by Refund Request
Grant Thornton	1	\$ 1,586	Jan. 1999 - May 1999 Nov. 1999 - Nov. 2002
Grant Thornton	1	3,575	Jan. 2000 - Nov. 2002
Grant Thornton	1	30,104	June 1998 - May 2003
	2	2,133	Sept. 1998 - May 1999 Sept. 2000 - July 2003
	3	610	March 2002 - July 2003
Grant Thornton	1	43,571	Jan. 2001 - Oct. 2003
Grant Thornton	1	3,207	Jan. 2001 - July 2003
	2	7,650	Jan. 2001 - July 2003
	3	6,381	Jan. 2001 - July 2003
Hotel Brand	1	1,531	April 2001 - March 2004
	2	655	April 2001 - March 2004
	3	675	April 2001 - March 2004
	4	530	April 2001 - March 2004
	5	426	April 2001 - March 2004
	6	833	July 2001 - March 2004
	7	560	Feb. 2002 - March 2004
	8	952	Dec. 2001 - March 2004
	9	600	Oct. 2002 - March 2004
	10	279	April 2001 - March 2004
	11	591	April 2001 - March 2004
	Total	\$ 106,448	

Note: Refunds pending outcome of this report

Miami-Dade County Refund Requests

Refund Requests	Amount of Refund Request	Status of Refund Request
Hotel 1	45,624	Granted *
Hotel 2	3,932	Granted *
Hotel 3	14,263	Granted *
Hotel 4	133,241	Granted *
Hotel 5	21,627	Granted *
Hotel 6	408	Granted *
Hotel 7	13,229	Granted *
Misc Hotels	348	Granted *
Total	\$ 232,672	

* Refunds taken as credit against monthly tourist development tax liability

Duval County Refund Requests

Refund Requests	Amount of Refund Request	Dates Covered by Refund Request
Grant Thornton		
Hotel 1	\$ 2,387	Jan. 2001 - July 2003
Hotel 2	9,580	Jan. 2001 - July 2003
Hotel 3	6,602	Jan. 2001 - July 2003
Total	\$ 18,569	

Note: Refund requests forwarded to the General Council's Office

Hillsborough County Refund Requests

Refund Requests	Amount of Refund Request	Dates Covered by Refund Request
Grant Thornton		
Hotel 1	\$ 23,531	Sept. 1998 - May 1999 Sept. 2000 - July 2003
Hotel 2	18,410	Jan. 2001 - Aug. 2003
Hotel 3	12,935	Aug. 1997 - May 1999 Aug. 1999 - July 2002
Hotel 4	6,260	Jan. 2001 - Nov. 2002
Hotel Brand	3,784	Aug. 2001 - Mar. 2004
Total	\$ 64,921	

*Appendix F – Hotel Rewards Points Refund Requests for Counties With TDT Collections in Excess of \$10 Million
For Fiscal Year 2002-03*

Note: Refunds on hold until the Department of Revenue rules on issue.

Lee County Refund Requests

Refund Requests	Amount of Refund Request	Dates Covered by Refund Request
Grant Thornton		
Hotel 1	\$ 1,161	Aug. 1997 - May 1999
Hotel 2	4,012	Sept. 1998 - July 2003
Hotel 3	28,143	Jan. 2001 - Aug. 2003
Hotel Brand	1,696	Aug. 2001 - Mar. 2004
Total	\$ 35,012	

Note: Refunds were all denied

Monroe County Refund Requests

Refund Requests	Amount of Refund Request	Dates Covered by Refund Request
Grant Thornton	\$ 35,591	Nov. 1999 - Oct. 2002
Grant Thornton	34,563	Feb. 2001 - Feb. 2004
Grant Thornton	14,042	Aug. 1997 - May 1999 Aug. 1999 - July 2002
Hotel Brand	1,564	Aug. 2001 - Mar. 2004
Hotel Brand	1,209	Aug. 2001 - Mar. 2004
Total	\$ 86,969	

Note: Refunds pending ruling from the Department of Revenue

Orange County Refund Requests

Refund Requests	Amount of Refund Request	Dates Covered by Refund Request
Grant Thornton		
Hotel 1	\$ 84,671	Aug. 1997 - May 1999 Aug. 1999 - July 2002
Hotel 2	6,378	Aug. 1997 - May 1999 Aug. 1999 - July 2002
Hotel 3	44,895	Jan. 1999 - Dec. 2002
Hotel 4	246,872	Sept. 1998 - May 1999 Sept. 2000 - May 2003
Hotel 5	7,277	Sept. 1998 - May 1999 Sept. 2000 - May 2003
Hotel 6	27,908	Sept. 1998 - May 1999 Sept. 2000 - May 2003
Hotel 7	4,054	Sept. 1998 - May 1999 Sept. 2000 - May 2003
Hotel 8	41,049	Sept. 1998 - May 1999 Sept. 2000 - May 2003
Hotel 9	1,837	Sept. 1998 - May 1999 Sept. 2000 - May 2003
Hotel 10	10,896	Sept. 1998 - May 1999 Sept. 2000 - May 2003
Hotel 11	7,085	Sept. 1998 - May 1999 Sept. 2000 - May 2003
Hotel 12	7,904	Sept. 1998 - May 1999 Sept. 2000 - May 2003
Hotels 4 - 12	90,000	June 2003 - Dec. 2003

**Orange County Refund Requests
(Continued)**

Refund Requests	Amount of Refund Request	Dates Covered by Refund Request
Grant Thornton		
Hotel 13	53,413	Jan. 2001 - Oct. 2003
Hotel 14	56,358	Jan. 2001 - Oct. 2003
Hotel 15	27,894	Jan. 2001 - Oct. 2003
Hotel 16	7,034	April 2003 - Sept. 2003
Hotel 17	5,984	April 2003 - Sept. 2003
Hotel 18	3,740	April 2003 - Sept. 2003
Hotel 19	5,368	Jan. 2001 - Aug. 2003
Hotel 20	404	Jan. 2001 - Aug. 2003
Hotel 21	958	Jan. 2001 - Aug. 2003
Hotel 22	516	Jan. 2001 - Aug. 2003
Hotel 23	58,395	Jan. 2001 - Aug. 2003
Hotel 24	964	Jan. 2001 - Aug. 2003
Hotel 25	20,739	Feb. 2001 - April 2003
Hotel 26	2,232	Jan. 2001 - Aug. 2003
Hotel 27	1,386	Jan. 2001 - Aug. 2003
Deloitte		
Hotel 28	56,873	Jan. 2001 - Jan. 2004
Hotel 29	56,873	Jan. 2001 - Jan. 2004
Hotel Brands		
Hotel 30	687	April 2001 - Mar. 2004
Hotel 31	255	April 2001 - Mar. 2004
Hotel 32	418	April 2001 - Mar. 2004
Hotel 33	290	April 2001 - Mar. 2004
Hotel 34	50	April 2001 - Mar. 2004
Hotel 35	790	April 2001 - Mar. 2004
Hotel 36	1,033	April 2001 - Mar. 2004
Hotel 37	688	April 2001 - Mar. 2004
Total	\$944,166	

Note: Refunds pending receipt of additional audit information

*Appendix F – Hotel Rewards Points Refund Requests for Counties With TDT Collections in Excess of \$10 Million
For Fiscal Year 2002-03*

Osceola County Refund Requests

Refund Requests	Hotels	Amount of Refund Request	Status of Refund Request
Grant Thornton	10	\$ 7,227	no standing
	1	851	no standing
	3	2,880	denied
Total	14	\$ 10,959	

Palm Beach County Refund Requests

Source of Refund Requests	Hotels	Amount of Refund Request	Dates Covered by Refund Request
Grant Thornton	1	\$ 323	Aug. 2001 - Mar. 2004
	2	1,365	Aug. 2001 - Mar. 2004
Grant Thornton	1	2,372	Jan. 2001 - Aug. 2003
	2	347	Jan. 2001 - Aug. 2003
Grant Thornton	1	6,061	Jan. 2001 - Aug. 2003
	1	3,131	Sept. 1999 - May 1999 Sept. 2000 - July 2003
Grant Thornton	1	1,659	Sept. 1999 - May 1999 Sept. 2000 - July 2003
Grant Thornton	1	2,608	Sept. 1999 - May 1999 Sept. 2000 - July 2003
Grant Thornton	1	15,851	Jan. 2001 - Dec. 2003
Grant Thornton	1	4,391	Dec. 2000 - Sept. 2003
	Total	\$ 38,108	

Note: Refunds denied. Will reconsider if DOR grants refunds first.

Pinellas County Refund Requests

Source of Refund Request	Hotels	Amount of Refund Request	Date Covered by Refund Request
Grant Thornton	1	\$ 3,074	Sept. 1998 - July 2003
	2	2,750	Sept. 1998 - July 2003
	3	27,116	Jan. 1999 - May 2003
Grant Thornton	1	1,480	Jan. 2001 - Aug. 2003
	2	1,525	Jan. 2001 - Aug. 2003
Hotel Brand*	1	276	Aug. 2001 - Mar. 2004
	2	328	Aug. 2001 - Mar. 2004
	3	355	Aug. 2001 - Mar. 2004
	4	565	Aug. 2001 - Mar. 2004
	5	445	Aug. 2001 - Mar. 2004
	6	1,279	Aug. 2001 - Mar. 2004
	7	697	Aug. 2001 - Mar. 2004
	8	304	Aug. 2001 - Mar. 2004
	Total	\$ 40,195	

Note: Refund requests on hold pending outcome of this report

* Requested an extension to file an additional refund claim through August 2004.