

How Has Taxing Hotel Remarketers Affected City Hotel Occupancy Tax Revenue?

Introduction

Since the 1990s, the internet has changed the way many consumers shop for hotel rooms. Online travel companies allow consumers to review hotel options and reserve rooms directly through their platforms. These online companies are known as room “remarketers.” In general, remarketers contract with hotels for the right to rent rooms and consumers pay a service fee in their room rate that generates revenue for the remarketer.

For many years, remarketer fees paid for hotel rooms in New York City were not subject to the local Hotel Room Occupancy Tax of 5.875%. Local Law 43 (2009) applied the City’s hotel tax to remarketer fees, and the law went into effect in 2013 following legal challenges that ultimately upheld the law. In June 2016, the City made additional changes to how remarketers report and collect Hotel Room Occupancy Tax.

Updating the City’s Hotel Room Occupancy Tax to apply to remarketer fees represents a modest expansion of the City’s tourism-related tax base. In this report, the New York City Independent Budget Office (IBO) reviews the history to date of the tax on remarketer fees. This analysis includes descriptive statistics of the taxes owed by remarketers since Fiscal Year 2015 and details about the share of remarketers’ tax liability in terms of overall Hotel Room Occupancy Tax liability in New York City.

Hotel Room Remarketers in New York City

Remarketer businesses operate by first contracting with hotels to gain the right to sell a room reservation to consumers.¹ The remarketer pays the hotel less than potential market rate and then includes a fee in the retail price to make a profit. Hotel operators may benefit from this arrangement. Rather than retaining the sole right to market their rooms directly to consumers, by engaging with remarketers hotel operators may gain access to a broader field of consumers. In some cases, contracting with remarketers may also reduce administrative and time costs for hotel operators.²

New York City’s Local Law 43 (2009) redefined hotel rent to include service fees that remarketers charge to consumers on top of the base rent of the hotel rooms. The practical

outcome of the law was to apply the Hotel Room Occupancy Tax to the full retail price of the room rather than the underlying rate the remarketer paid the hotel. For example, prior to Local Law 43's implementation, if a remarketer agreed to pay a hotel \$250 per day for the right to reserve a room on the hotel's behalf and then charged a consumer \$300 per day to rent the room, the remarketer would not be responsible for paying hotel tax on the \$50 difference. With Local Law 43 in effect in 2013, remarketers must now pay the 5.875% tax on the full retail price the consumer paid for the room reservation.³

Notes About Hotel Tax Data Used in Analysis

In this analysis, IBO uses tax liability from the City Department of Finance (DOF). DOF's dataset specifies whether a taxpayer is a remarketer, allowing IBO to sort liability owed by remarketers versus other taxpayers. For all liability where the taxpayer is not registered as a remarketer, IBO assumes that the consumer booked the reservation directly with the business.⁴

There is an important difference between taxes owed and taxes paid. Tax liability refers to the balance of tax that a taxpayer owes based on tax documents submitted to DOF. Tax revenue refers to actual money collected by the government from a taxpayer, which the Mayor's Office of Management and Budget (OMB) tracks. Tax liability and tax revenue are usually very close but not precisely equal in any time period. Reasons for the difference may include:

- accidental misreporting of tax liability
- over- or under-payment by taxpayers
- refunds or credits given to taxpayers

In all the years covered in this analysis, from City fiscal years 2015 through 2024, annual tax revenue and tax liability varied by no more than three percentage points.

Legal Actions Against Local Law 43

In 2009, a group of online travel companies mounted a legal challenge against Local Law 43. They argued that the fees they charge consumers were not "rent" as defined by the State legislation that enables localities to charge hotel and motel occupancy taxes. Therefore, they argued, Local Law 43 was unconstitutional. Initially, the New York State Supreme Court sided with the City and dismissed the suit. The Appellate Division then reversed the lower court's decision, arguing that the City did not possess the constitutional powers to tax remarketer fees. Meanwhile, the 2010 New York State Enacted Budget amended the State's laws to clarify that [remarketer fees](#) are subject to both Hotel Room Occupancy Tax and General Sales Tax charged by New York City. In 2013, the State's Court of Appeals overturned the Appellate Division's ruling and [upheld Local Law 43](#) as constitutional.

The Hotel Room Occupancy Tax is a small tax revenue source to the City relative to the City's three major tax revenue sources: Real Property Tax, Personal Income Tax, and General Sales Tax. In fiscal year 2024, for example, the Hotel Room Occupancy totaled \$706 million, just under 1% of the City's total tax revenue. Hotel Room Occupancy Tax collections respond to trends in tourism and business travel to the City as well as changes in hotel room prices.

Tax on Remarketer Fees Has Contributed Over \$144 Million to Total Hotel Room Occupancy Tax Liability Since 2014

When Local Law 43 (2009) took effect in 2013, remarketers collected and remitted Hotel Room Occupancy Tax based on the full retail price they charged consumers. They also paid tax to the hotel operators from whom they rented the rooms before renting them to consumers, which they offset by applying for tax refunds or credits from the City for an equal amount. As a result, remarketers' net tax liability was based only on their markup fees.

In June 2016, the City issued new instructions for how hotel remarketers report and collect Hotel Room Occupancy Tax. Remarketers gained an exemption from paying Hotel Room Occupancy Tax when they reserved rooms from hotel operators, so in general they no longer receive refunds or credits for taxes paid to hotel operators. Remarketers are still required to collect and submit taxes based on the full retail price, and their net tax liability now reflects the full retail price paid by consumers.

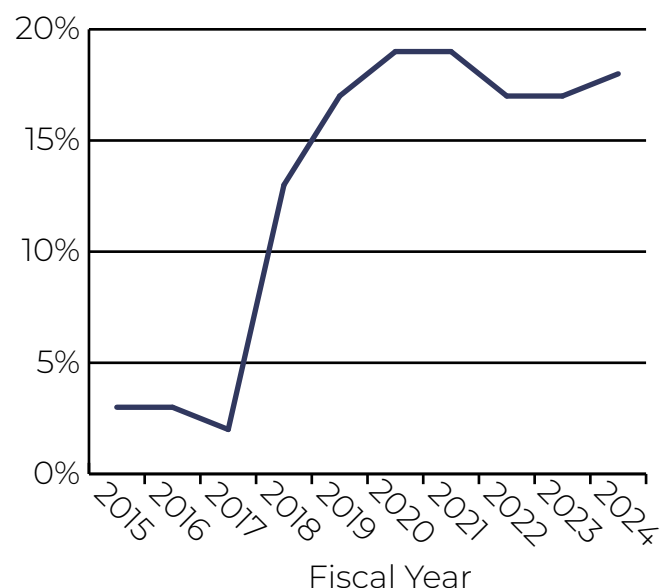
This change began showing up in the tax liability data in fiscal year 2018 and was fully implemented starting in fiscal year 2019. In this time, the share of total Hotel Room Occupancy Tax liability reported by remarketers grew substantially. (All subsequent years refer to City fiscal years unless otherwise noted.) In 2015, 2016, and 2017—the first three years when data are available—remarketers' net tax liability accounted for about 3% of total Hotel Room Occupancy Tax liability each year. From 2019 through 2024, the average share of total hotel tax liability reported by remarketers was close to 18%—a sixfold increase from the first three years of data, as shown in Figure 1.

After the June 2016 rule change, remarketers paid the Hotel Room Occupancy Tax on both the room rate they paid to the hotel and on their fees. The two components,

FIGURE 1

Percentage of Total Hotel Room Occupancy Tax Liability via Remarketer Bookings

Remarketer Percentage of Total Hotel Room Occupancy Tax Liability



SOURCE: IBO analysis of NYC Department of Finance data
New York City Independent Budget Office

however, are not broken out in the tax liability reporting. It is impossible to measure definitively how much tax liability increased after applying the Hotel Room Occupancy Tax to remarketer fees. Nevertheless, IBO developed a way to estimate this figure:

- First, IBO calculated the average share of total hotel tax liability derived from hotel remarketers during 2015 to 2017 when the tax only applied to remarketer fees (3%).
- Next, IBO applied this 3% figure to total Hotel Room Occupancy Tax liability from 2018 to 2024.
- IBO also applied the average remarketer share (3%) to total Hotel Room Occupancy Tax revenue in 2014, the first full year when Local Law 43 was in effect following the 2013 New York Court of Appeals decision.⁵

Following this methodology, IBO estimates that applying the Hotel Room Occupancy Tax to remarketer fees led to about \$144

million in new tax liability from 2014 through 2024. This averages to around \$13 million per year. Figure 2 shows IBO's estimated annual tax liability from remarketer fees. A notable drop in the total tax liability appears in 2021 and 2022, as the onset of the pandemic drastically curbed business and leisure travel. Also, the Hotel Room Occupancy Tax was suspended from June 1 through October 31, 2021.

Median Rent per Room via Remarketer Bookings Higher Than Via Direct Bookings

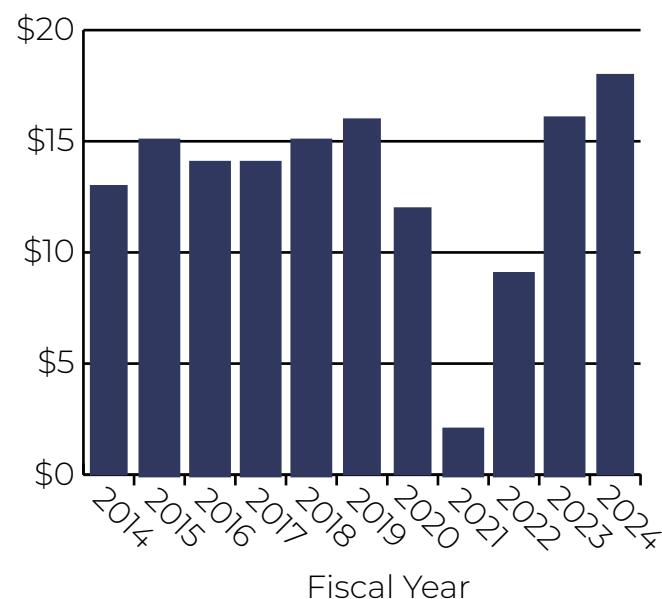
Between 2018 and 2024, the median rent per room consumers paid for hotel room reservations via remarketers was consistently higher than the median rent per room paid via direct bookings. Both values dropped substantially in 2020 and 2021 during the pandemic and have since risen to pre-pandemic levels. See Figure 3 for more details. These data have not been adjusted for inflation.

The difference between prices consumers pay for remarketer bookings and those paid for direct bookings has at least two plausible explanations. First, remarketer websites may cater more to higher-price hotels than mid-tier or economy hotels. In this scenario, the higher median rent per room for remarketer bookings is a result of more expensive, amenity-rich rooms available on remarketer websites, on average, compared with all City hotel rooms.

FIGURE 2

Estimated Annual Tax Liability from Remarketer Fees

Dollars in Millions



SOURCES: IBO analysis of NYC Department of Finance data, IBO analysis of NYC Office of Management & Budget data
New York City Independent Budget Office



On the other hand, the discrepancy may come from hotel remarketers charging higher prices than hotels directly renting the same or similar rooms. This scenario seems less likely, however, given consumers' ability to compare prices online and choose the room with the cheapest rate. Without information on the actual hotel rooms that consumers book via remarketer websites, which the City does not collect, it is impossible to investigate the source of this room rate discrepancy further.

Number of Hotel Remarketers Increased Before Pandemic and Declined Since Pandemic

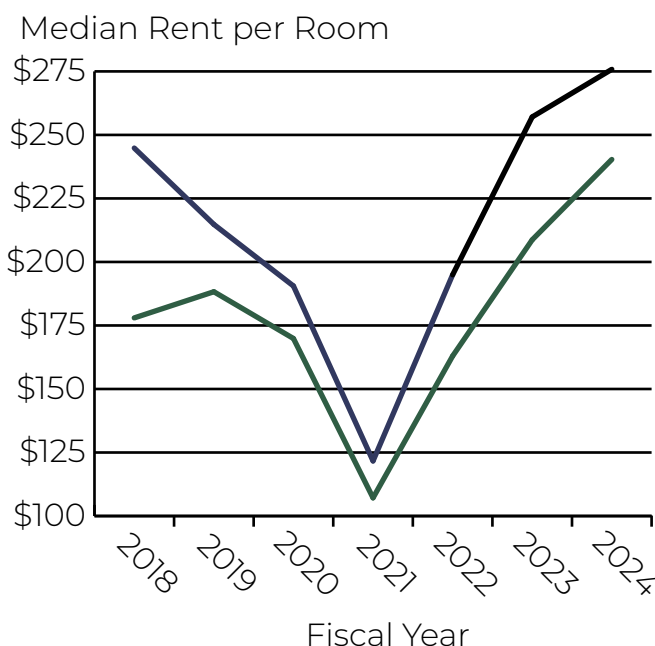
Since 2015, the total number of remarketers paying Hotel Room Occupancy Tax has fluctuated over time. The remarketer count grew from 34 in 2015 to a high of 44 in 2019, then fell to 32 and 33 in 2023 and 2024, respectively. (See Figure 4.)

The City saw sizable percent changes in the number of remarketers with Hotel Room Occupancy Tax liability over the last decade—an increase of 29% from 2015 to 2019, and a decrease of 27% from 2019 to 2023. Overall, however, the share of total City hotel taxpayers

FIGURE 3

Median Rent per Room Direct vs. Remarketer Booking

- Remarketer Booking
- Direct Booking

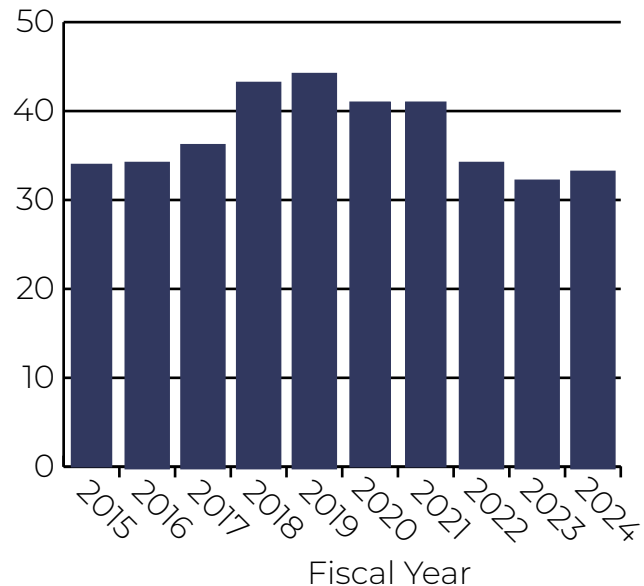


SOURCE: IBO analysis of NYC Department of Finance data
New York City Independent Budget Office

FIGURE 4

Number of Remarketers With Hotel Room Occupancy Tax Liability

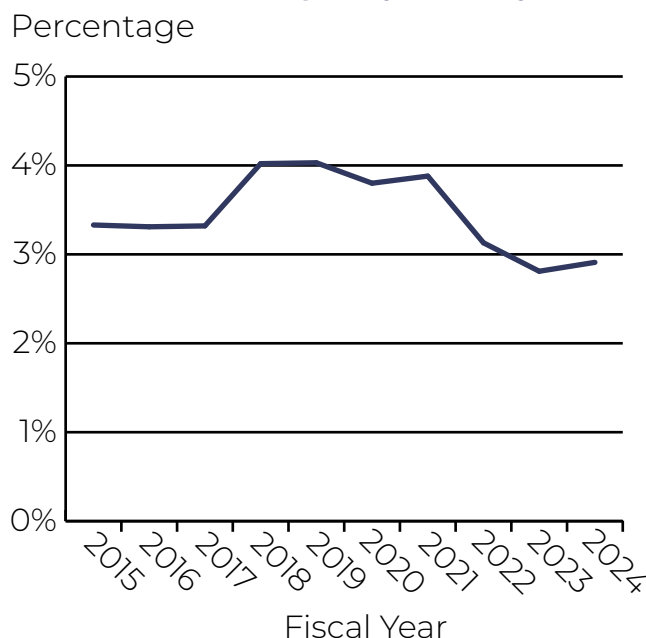
Remarketers Count



SOURCE: IBO analysis of NYC Department of Finance Data
New York City Independent Budget Office

FIGURE 5

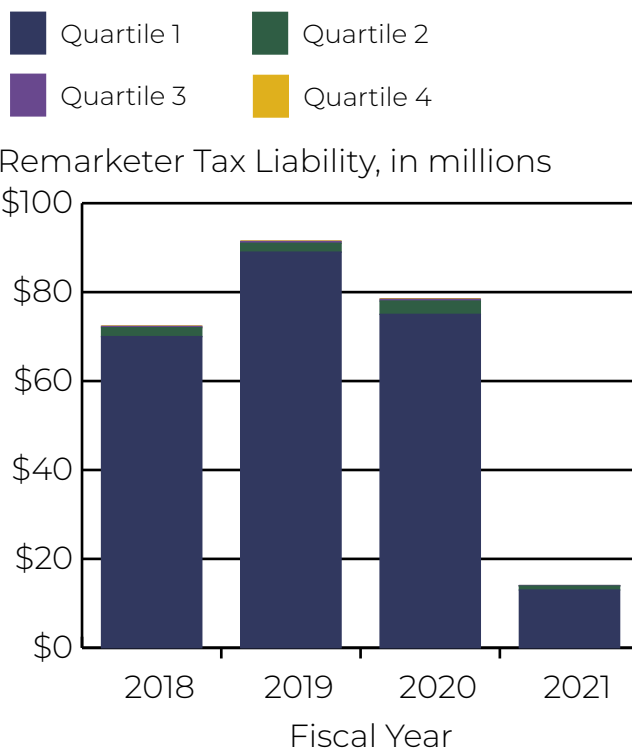
Remarketers as a Percentage of All Hotel Room Occupancy Tax Payers



SOURCE: IBO analysis of NYC Department of Finance data
New York City Independent Budget Office

FIGURE 6

Remarketer Hotel Room Occupancy Tax Liability by Quartile



SOURCE: IBO analysis of NYC Department of Finance Data
NOTE: This figure includes only years when each quartile had at least ten Hotel Room Occupancy Tax filers.
New York City Independent Budget Office

that are remarketers has remained low, between 2.8% and 4.0%, as shown in Figure 5. The recent reduction in the population of remarketers is likely due to two main factors. First, some remarketer companies left the market during the pandemic, which started at the tail end of fiscal year 2020. Second, the remarketer industry has seen acquisitions and consolidation in recent years, leading some remarketers to stop appearing in DOF records as separate hotel taxpayers.

Half of Remarketers Account for Vast Majority of Hotel Room Occupancy Tax Liability

Half of the remarketer companies operating in the City have consistently accounted for almost all the total hotel tax liability that remarketers owe. From 2015 through 2024, the top half of remarketers in terms of total liability accounted for an average of 99% of hotel remarketer liability each year. From 2018 through 2021, the top quartile of remarketers alone accounted for over 95% of tax liability. These results indicate that a small number of remarketers hold an outsized share of remarketer transactions (see Figure 6).

Conclusion

For over ten years, hotel remarketers have been required to pay Hotel Room Occupancy Tax on the fees they charge consumers. The result has been almost \$150 million in additional tax revenue over 11 years, according to IBO's estimate.

When the New York City Council considered and passed Local Law 43 in 2009, online travel companies warned that the new tax would lead to a slowdown in tourism to the City.⁶ Between 2013 and 2019—the last year before the onset of the pandemic—total tourist visits increased from 53 million to over 66 million. It is possible that the tax on remarketer fees was a small enough addition to the overall cost of a trip to New York City that it did not dissuade many visitors. It is also possible that while the tax put some downward pressure on hotel demand, it was outweighed by positive demand driven by other factors.

DOF data show that, on average, rooms booked via hotel remarketers have higher rents than rooms booked directly via hotels. This differential may reflect remarketers' tendency to work with hotels with higher average room rates, rather than a reflection of higher total retail prices from remarketer fees. Without more detailed data that show the breakdown between wholesale prices and remarketer fees, and the specific hotel properties where remarketers are renting rooms, it is impossible to address this research question further.

The results presented in this report may be useful for legislators in other municipalities and states who are considering applying local or state lodging taxes to remarketer fees.

Endnotes

- ¹ The New York City Administrative Code (Title 11, Chapter 25, 11-2501) defines a hotel room “remarketer” as “[a] person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by such room remarketer, directly or indirectly, whether pursuant to a written or other agreement.”
- ² Bishop-Henchman, Joseph. (2012, May 9). Taxation of online travel services: Lawsuits generally not succeeding in effort to expand hotel taxes. Tax Foundation.
- ³ The New York City Hotel Room Occupancy Tax has two components: first, a 5.875% tax on the total rent paid by the consumer; second, a daily room rate that ranges from \$0.50 to \$2.00 per day based on the day hotel room rate. For example, a four-day stay in a hotel room that cost \$200 per night would be subject to Hotel Room Occupancy Tax equal to $(\$200 \times 5.875\%) + (\$2.00 \times 4) = \$19.75$. Purchases subject to the City Hotel Room Occupancy Tax are also subject to local and state General Sales Tax.
- ⁴ Hotels that serve tourists are not the only entities required to pay Hotel Room Occupancy Tax in New York City. DOF defines “hotel” as “any building or portion thereof that is regularly used and kept open for the lodging of occupants.” In addition to hotels and motels that serve tourists and other travelers, this definition includes boarding houses, social clubs with guest rooms, serviced apartments, and short-term rental properties. There are several exceptions; for example, a building is not considered a hotel if rooms are only rented for up to 14 days, and Hotel Room Occupancy Tax is not collected when a room or apartment is rented to the same occupant for a period of at least 180 consecutive days. Because of this expansive definition of “hotel” for tax purposes, in a given fiscal year there are dozens more entities registered to pay Hotel Room Occupancy Tax than hotel properties in the City. DOF’s Hotel Room Occupancy Tax data does not differentiate between types of taxpayer, except for noting when a taxpayer is a remarketer.
- ⁵ Because Department of Finance tax liability data starts in 2015, IBO uses Office of Management & Budget tax revenue data as a proxy for Hotel Room Occupancy Tax liability in 2014.
- ⁶ Baran, Michelle. (2009, July 27). New York City enacts tax on all resellers of hotel rooms. Travel Weekly.

Prepared By:
Eric Mosher



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