

THLA's Simplified Hotel Occupancy Tax Exemption Rules

TYPE OF BUSINESS REQUESTING EXEMPTION	EXEMPT FROM STATE H.O.T.	EXEMPT FROM LOCAL H.O.T.	COMMENTS
Agricultural Development Corporations	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
City & County Employees	Not exempt	Not exempt	Local government employees are not exempt from hotel taxes, even when traveling on official business.
Charitable Organizations	Depends (see comments to the right)	Not exempt	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate. Charitable entities must be able to show that they devotes all or substantially all of their activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment shelter, or psychological counseling directly to indigent or similarly deserving members of society, with entity funds derived from sources other than fees or charges for its services. Other 501 (c) (3) and 501 (c) (6) entities are not exempt.
Texas Educational Organizations (see comments on the right regarding differences between Texas and out-of-state educational organizations)	Yes	Not exempt	Guest must fill out tax exemption certificate. State law limits the state hotel occupancy tax exemption for higher education entities to only Texas institutions of higher education. Out-of-state higher education entities are not exempt from the state or local hotel tax. However, out-of-state educational entities that are not institutions of higher education (high schools, middle schools, elementary schools, etc.) are exempt from state hotel taxes just like their Texas counterparts.
Electric & Telephone Cooperatives	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Federal Credit Unions	Yes	Yes	Guest must fill out tax exemption certificate, and Present a valid ID. Texas Comptroller opinion letters indicate that employees traveling on official business as employees of a federal credit union are treated as federal government employees.
Federal Employees (includes FEMA and Red Cross reimbursed rooms)	Yes	Yes	Guest must fill out tax exemption certificate, and Present a valid ID.
Foreign Diplomats	Yes	Yes	Guest must fill out tax exemption certificate, and Guest must present tax exempt card issued by U.S. Department of State.

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Health Facilities Development Corporations	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Housing Authorities & Finance Corporations	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Pan American Games Olympic Games Local Organizing Committees	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Permanent Residents (30 days or more)	Yes	Yes	Guest must notify of their intent to stay 30 or more days from the beginning. If stay is interrupted, hotel occupancy taxes must be paid. Guests who do not notify the hotel of the anticipated over 30 day duration of their stay are exempt for hotel occupancy taxes beginning on the 31 st consecutive day of their stay.
Public Facility Corporation	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Regional Education Service Centers	Yes	Not exempt	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Religious Organizations	Yes	Not exempt	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
High Ranking State Officials with Hotel Tax Exemption Photo ID Card	Yes	Yes	Guest must fill out tax exemption certificate, and Guest must present state photo ID card that specifically notes that employee is exempt from hotel occupancy tax. These are heads of state agencies; members of state boards and commissions; state legislators and their staff; and state judges.
General State Employees without Special Hotel Tax Exemption Photo ID Card	Not exempt	Not exempt	Guest must pay the state and local hotel tax, and then have their state agency may apply for reimbursement through a separate process.

Exemptions from the Local Tax

Texas law provides certain hotel tax exemptions based on the length of a guest's stay or the guest's affiliation with an exempt organization. Texas law is more permissive for exemptions from the state 6% hotel occupancy tax than it is for local hotel tax exemptions. The state hotel occupancy tax allows for an exemption for the following entities: educational, charitable, and religious entities are often exempt from the state hotel occupancy tax. These entities are *not exempt* from local hotel occupancy taxes.¹

Focusing specifically on the local hotel occupancy taxes, there are primarily four categories of exemptions permitted from municipal and county hotel occupancy taxes:

- 1) **Federal Employees:** Federal employees traveling on official business;
- 2) **Diplomats:** Foreign diplomats with a tax exempt card issued by the U.S. Department of State;
- 3) **High Ranking State Officials:** A very limited number of state officials with a hotel tax exemption card (e.g. heads of state agencies, state legislators and legislative staff, members of state boards and commissions, and state judges); and
- 4) **Permanent Resident/Over 30 Day Stay:** Persons or businesses who have agreed in advance to use a hotel room for more than 30 consecutive days (i.e. the "permanent resident" hotel tax exemption).²

Hotel guests claiming items one through three of the above exemptions are required to show appropriate identification and to fill out a "Hotel Occupancy Tax Exemption Certificate" promulgated by the Texas Comptroller.³ The tax exemption certificate form is available on the Texas Comptroller's website at <http://www.window.state.tx.us/taxinfo/taxforms/12-forms.html>.

Permanent residents (guests who stay for more than 30 days):

Special attention should be paid to the "permanent resident" hotel tax exemption. This permanent resident exemption applies to both state and local hotel taxes, and ensures that hotel guests staying over 30 days are taxed the same as residents staying at extended-stay properties, apartments, corporate rental facilities, rental houses, etc.⁴ The Texas Tax Code states that any "person" who has the right to use or possess a lodging room for at least 30 consecutive days is exempt from state and local hotel occupancy taxes, provided there is no interruption in payment for the room during this period.⁵ In Texas, a "person" also includes a corporation or business. Therefore, one should look to whether the same person, corporate entity, business, or other entity paid for the room for that entire period.

If, in advance or upon check-in, the guest provides notice to a hotel of intent to occupy a guest room for 30 days or longer, no tax is due for any part of a guest's stay. A signed registration card or confirmed reservation indicating a guest's intent to occupy a room for 30 days or longer is sufficient written evidence.⁶ Furthermore, the guest is not actually required to physically occupy the room, but the guest must maintain the right to occupy the room for the length of the exemption period.⁷

If no notice is provided upon check-in that can be documented by a written agreement (guest reservation, confirmation, registration, or folio or separate agreement), the first 30 days of the guest's stay are **not** tax-exempt.⁸ However, the guest's stay becomes automatically tax exempt on the 31st day—regardless of whether there was prior notice of the guest's intent to stay for 30 days or more, as long as there has been no interruption in payment for the room.⁹

¹ Tex. Tax Code § 156.102.

² § 156.104.

³ *Id.*

⁴ § 156.101.

⁵ Tex. Tax Code § 156.101; 34 Tex. Admin. Code § 3.161(a)(4).

⁶ Tex. Comptroller Opinion Letter No. 200601452L, Jan. 27, 2006.

⁷ 34 Tex. Admin. Code § 3.161(b)(2)(C).

⁸ § 3.161(b)(2)(A).

⁹ *Id.*

THLA generally recommends hoteliers collect hotel occupancy taxes from the guest for the first 30 days of the guest's stay. On the 31st day of the guest's stay, provided there is no interruption of payment for the room and there was prior written notice or a reservation indicating the guest's intent to stay 30 days or longer, the hotel should refund the collected hotel occupancy taxes for the first thirty days. This protects the hotel from incurring tax liability should the guest check out before staying at least 30 days. The hotel could choose to not collect the hotel tax during the stay if the guest paid in advance for the entire 30 days and there was no allowance for a refund if the guests checks out early.

State Employees:

Virtually all rank and file state employees do not have a special hotel occupancy tax exemption card that prevents them from having to pay the state and local hotel tax even when they are on official business. Such state employees must pay the state and local hotel occupancy tax when paying their bill and, their employing agency may later apply for a refund from the state and local government tax offices.¹⁰ The state agency the employee works for is responsible for requesting this refund from the state and local government.

City and County Employees/Officials:

City and county officers and employees are not exempt from the state or the local hotel occupancy tax, even if the officers or employees are traveling on official business.¹¹ Additionally, cities have no legal authority to authorize additional exemptions from the hotel occupancy tax not recognized in the Tax Code.¹² The Attorney General ruled in JM-865 (1988) that cities cannot grant an exception to the hotel occupancy tax for religious, charitable, or educational organizations without new constitutional or statutory authority to do so.

Letters of tax exemption:

The Texas Comptroller maintains an online database of entities that have been granted a "Letter of Tax Exemption" from the state hotel occupancy tax. Most commonly, these organizations fall into the religious or charitable categories of exemption from the state hotel occupancy tax, and the Comptroller generally requires a letter of tax exemption to accompany a completed exemption certificate before an exemption may be granted on this basis. This database is accessible online at <http://www.window.state.tx.us/taxinfo/hotel/index.html>. It is important to note that many entities are exempt from the state sales tax, but are not exempt from the state or local hotel occupancy tax.

For religious entities with a national affiliation, oftentimes the national organization's letter of tax exemption will cover individual congregations.¹³ For example, a search of "Baptist Convention" on the online database reveals that the "NATIONAL BAPTIST CONVENTION OF AMERICA INCORPORATED" holds a letter of tax exemption that will also be valid for subordinate entities. An individual Baptist congregation affiliated with the National Baptist Convention can use the national organization's letter of tax exemption to accompany the signed exemption certificate.

Finally, the Comptroller's staff has indicated they are willing to exercise some flexibility for lodging properties that accept a tax exemption certificate in good faith from a qualifying religious entity when the entity may not yet have formally filed for a letter of tax exemption. This, however, should only be relied upon as a last resort, as there is no official report of this position, and auditors are trained to look for definitive documentation. In such a case, check the identification papers (ID, business card, etc.) for the traveler. If the entity fits into one of the exempt categories under the THLA exemption chart, honor the exemption if that entity is paying for the room. Make a copy of the identification item you are relying on, and be sure that all such travelers fill out the exemption certificate.

¹⁰ §3.163(b).

¹¹ See generally Tex. Tax Code § 351.005; Tex. Comptroller Opinion Letter No. 200202815L, Feb. 22, 2002.

¹² Tex. Att'y Gen. JM-865 (1988).

¹³ Tex. Comptroller Opinion Letter No. 200109470L, Sep. 13, 2001.