From Our Legal Department: The Hotel Occupancy Tax Permanent Resident Exemption

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We have received an increasing number of calls from hoteliers regarding the "30-Day" hotel occupancy tax exemption. We have previously covered this topic in *Industry Update*, but the information bears repeating with increasing local hotel occupancy tax audits. Now is a good time to make sure your staff members are handling over 30 day "permanent resident" exemptions correctly.

What is the over 30 day "permanent resident" hotel tax exemption?

When the hotel occupancy tax was first adopted in 1959, the Texas Legislature recognized the need to exempt long-term guests from paying hotel occupancy taxes. This exemption ensures that hotel guests staying over 30 days are treated the same as residents staying at apartments, corporate rental facilities, rental houses and extended-stay properties. The Texas Legislature provides the "permanent resident" exemption from both state and local hotel occupancy taxes for guests, regardless of the type of accommodation the guest selects. In addition, the stay does not need to be permanent; it simply needs to meet the criteria noted below.

Who qualifies as a "permanent resident?"

The Texas Tax Code states that any "person" who uses or possesses 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. In Texas, a "person" also includes a corporation or business. Therefore, you should determine whether the same person, corporate entity or business paid for the room for that entire period.

When does a guest qualify for the permanent resident exemption?

If at the time of making the reservation, or upon checking into the hotel, the guest provides notice of intent to occupy a guest room for 30 days or longer, no tax will be due for any part of that guest's stay. A guest folio for the original reservation or a signed registration card that indicate a guest's intent to occupy a room for 30 days or longer is sufficient evidence. If the folio for a shorter stay is changed to be longer than 30 days, the first 30 days would not be exempt.

If a guest does not provide notice of intent to stay 30 days or longer, when does the guest become exempt from hotel occupancy taxes?

If notice is not provided upon check-in that there is an intent to stay longer than 30 days (e.g.; no set check-out date, or a check-out date earlier than 30 days from check-in), *the first 30 days of the guest's stay are **not** tax-exempt*. However, the guest becomes automatically tax-exempt on the 31st day of their stay – if they end up staying longer then 30 days. The hotel can exempt the portion of a guest's stay after the passage of 30 consecutive days 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.

If a guest has a reservation for over 30 days,may the hotel choose to continue to collect hotel occupancy tax during the first 30 days of the guest's stay?

THLA recommends that 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 advance notice or a reservation indicating the guest's intent to stay 30 days or longer, the hotel should refund the guest for the collected hotel occupancy taxes for the first thirty days. This protects the hotel from incurring a tax liability should the guest check out before staying at least 30 days. An exception would be possible 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.

What if the guest checks out before he or she has stayed 30 days?

If the guest checks out prior to staying 30 consecutive days, state and local hotel occupancy taxes are due for the guest's entire stay, regardless of whether there was written notice or agreement that the guest would stay 30 days or longer. Again, THLA recommends that hoteliers collect occupancy taxes for the first 30 days of the guest's stay to avoid the hotel being liable for the tax should the guest check out early.

A few days after checking in with an uncertain check-out date, a guest provides written notice of intent to stay 30 days or longer. When does the guest become exempt from hotel occupancy taxes?

In this situation, the guest would not be tax-exempt for the days this room was occupied prior to notifying the property of her intent to stay 30 days or more. Once there is advance notice of an over 30 day reservation/stay, the guest would be tax exempt for that subsequent 30-day period. Again, the hotel should continue to collect hotel occupancy tax for that 30 days. Thirty-one days after the guest notifies the hotel that the guest intends to stay 30 days or longer, the hotel should refund the collected tax from the date the guest provided notice, and thereafter as long as the stay is continuous.

If the guest checks out for a day or fails to make payment on the occupied room, would this affect his/her tax exempt status?

The Texas Tax Code requires uninterrupted payment for the room for 30 consecutive days for an individual or company to qualify for the permanent resident exemption. If the guest or company fails to make payment or checks out prior to completing a 30-day stay, they would not qualify for the permanent resident exemption.

Note, however, that permanent residents are not required to physically occupy a hotel room. The guest can leave the room for extended periods of time, provided the guest is still paying for the room and the guest still has the right to occupy the room.

Is a company eligible for a permanent resident exemption if the company rents a room for more than 30 days but houses different employees in the rented room?

Texas statutes treat the term "person" to include more than just individuals. In this case, entities such as companies, corporations and other organizations are treated as "persons" under Texas law. If a company pays for the rental of a hotel room, the company is eligible for a permanent resident exemption. The company may allow different employees to occupy the room, provided the company meets the requirements of the exemption: renting the room for at least 30 consecutive days with no interruption of payment. The company renting the room qualifies for the hotel occupancy tax exemption, not the individual who is occupying the room. The right to the exemption is not impacted by different individuals checking in and out of the room, or individuals switching which room they occupy, as long as the company paying for the room pays for an uninterrupted 30-day period.

Where can I get more information on hotel occupancy tax exemptions?

Please contact a TH&LA attorney at 512-474-2996 or via email at jbragiel@texaslodging.com or sjoslove@texaslodging.com. TH&LA also has sample forms for guests to fill out noting their intent to stay over 30 days if you would like to document this intent. In addition, you can find the standard form for all guests to fill out for any hotel tax exemption on our website at www.texaslodging.com in our members resources section.