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# Texas Administrative Code

<u>TITLE 34</u>	PUBLIC FINANCE
<u>PART 1</u>	COMPTROLLER OF PUBLIC ACCOUNTS
<u>CHAPTER 3</u>	TAX ADMINISTRATION
<u>SUBCHAPTER K</u>	HOTEL OCCUPANCY TAX
RULE §3.161	Definitions, Exemptions, and Exemption Certificate

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Charitable or eleemosynary organization--A nonprofit organization devoting all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, medicine, medical treatment, shelter, or psychological counseling directly to indigent or similarly deserving members of society with its funds derived primarily from sources other than fees or charges for its services. If the organization engages in any substantial activity other than the activities described in this section, and those activities do not support or further the charitable purpose of that entity, it will not be considered as having been organized for purely public charity, and therefore, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the definition of a charitable or eleemosynary organization are fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chambers of commerce, and similar organizations. Even though not organized for profit and performing services that are often charitable in nature, these types of organizations do not meet the requirements for exemption under this provision.

(2) Educational organization--A nonprofit organization or governmental entity whose activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum, using the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An organization that has activities consisting solely of presenting discussion groups, forums, panels, lectures, or other similar programs, may qualify for exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. The organization will not be considered for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Entities that are defined in Education Code, §61.003, as Texas public or private "institutions of higher education" are recognized for exemption under this provision. Included in the definition of "institutions of higher education" is any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as identified in Education Code, §61.003. A Texas private "institution of higher education" is a private or independent university or college that is organized under the Texas Non-Profit Corporation Act; exempt from taxation under Article VIII, §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. §501); and accredited by the Southern Association of Colleges and Schools. Beginning October 1, 2003, public and private "institutions of higher education" from other states or countries do not meet the requirements for exemption under this provision.

(3) Hotel--Any building or buildings in which members of the public obtain sleeping accommodations for a

consideration. The term includes, in addition to the buildings listed in Tax Code, §156.001, manufactured homes, skid mounted bunk houses, residency inns, condominiums, cabins, and cottages.

(4) Permanent Resident--A person who has the right to use or occupy a room or space in a hotel for at least 30 consecutive days without interruption. A person may be an individual, organization, or entity.

(5) Private Club--An organization that provides members entertainment, recreation, sport, dining, social facilities, or other significant club amenities and assesses membership dues, initiation fees, and other charges, assessments, and fees for special privileges or status not available to the general public. The rental of a room is insignificant to the purpose or purposes of the organization and members pay the membership dues, initiation fees, and other charges, assessments, and fees not just for the right to rent a room but for other significant club amenities.

(6) Religious organization--A nonprofit organization that is an organized group of people regularly meeting for the primary purpose of holding, conducting and sponsoring religious worship services, according to the rights of their sect. The organization must be able to provide evidence of an established congregation showing that there is an organized group of people regularly attending these services. An organization that supports and encourages religion as an incidental part of its overall purpose, or one whose general purpose is furthering religious work or instilling its membership with a religious understanding, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic associations, churches with membership consisting of family members only, missionary organizations and groups who meet for the purpose of holding prayer meetings, bible study or revivals.

(b) Exemptions. This subsection deals with exemptions from the state hotel occupancy tax. For information on city and county hotel taxes, contact the affected city or county.

(1) Religious, charitable, and educational organizations and their employees, including college and university personnel, traveling on official business of the organization are exempt from payment of hotel occupancy tax.

(2) State officials, judicial officers, heads of state agencies, the Executive Director of the Legislative Council, the Secretary of the Senate, state legislators, legislative employees, members of state boards and commissions, and designated state employees of the State of Texas who present a Hotel Tax Exemption Photo Identification Card when traveling on official state business are exempt from the hotel occupancy tax. State agency, institution, board, or commission employees who have not been issued a Hotel Tax Exemption Photo Identification Card must pay the hotel occupancy tax. The hotel tax paid by the state or reimbursed to a state employee may be refunded as provided in §3.163 of this title (relating to Refund of Hotel Occupancy Tax). For the purpose of claiming an exemption, a Hotel Tax Exemption Photo Identification Card includes:

(A) any photo identification card issued by a state agency that states "EXEMPT FROM HOTEL OCCUPANCY TAX, under Tax Code, §156.103(d)", or similar wording; or

(B) a Hotel Tax Exemption Card that states "when presented with a photo identification card issued by a Texas agency, the holder of this card is exempt from state, municipal, and county hotel occupancy tax, Tax Code, §156.103(d)", or similar wording.

(3) The United States government and its employees traveling on official business representing the United States government are exempt from the hotel occupancy tax.

(4) Diplomatic personnel of a foreign government who present an appropriate Tax Exemption Card issued by the United States Department of State are exempt from the tax.

(5) If an exemption applies, then the organization or individual claiming exemption must present an exemption

certificate to the hotel.

(6) Permanent residents are exempt from payment of hotel occupancy tax.

(A) A permanent resident is exempt beginning on:

(i) the first day for which the resident has entered into a written agreement with the hotel or has given a written notice to the hotel of the resident's intent to use or occupy a room or space in the hotel for the next 30 or more consecutive days and the resident actually stays for at least the next 30 consecutive days; or

(ii) the first day after the 30th consecutive day of the stay, if the resident neither gave written notice of intent to stay, nor entered into any written agreement with the hotel. For example, if a person does not notify the hotel that he intends to stay for at least 30 days, but stays 35 days, then the person is exempt from hotel tax from the 31st day through the 35th day, but tax is due on the first 30 consecutive days of the occupancy.

(B) The permanent resident exemption ends when an interruption in the right to use or occupy the room or space occurs.

(C) Permanent residents are not required to physically occupy a room or space.

(D) Permanent residents may have the right to use or occupy different rooms in the same hotel without loss of the permanent resident exemption.

(E) The permanent resident exemption applies to the lowest number of rooms in a written notice, agreement, or contract for a range of rooms plus the number of rooms that qualify for the permanent resident exemption under subparagraph (A)(ii) of this paragraph.

#### Attached Graphic

(c) Exemption certificate.

(1) Any organization or individual claiming exemption from the payment of hotel occupancy tax must furnish the hotel with a signed exemption certificate.

(2) The rental of a room or space in a hotel is exempt from tax if the person required to collect the tax receives, in good faith from a guest, a properly completed exemption certificate stating that the guest qualifies for exemption under Tax Code, §156.102 or §156.103 or other law. The exemption certificate must be supported by the following documentation:

(A) for persons traveling on official business of the federal government, a valid government identification card;

(B) for state officials exempted by Tax Code, §156.103(d), a Hotel Tax Photo Identification Card, as described in subsection (b)(2)(A) or (B) of this section;

(C) for diplomatic personnel of a foreign government, the appropriate Tax Exemption Card issued by the United States Department of State;

(D) for persons traveling on official business of a charitable, educational, or religious organization, as defined in subsection (a)(1), (2) or (6) of this section:

(i) a letter of hotel tax exemption issued by the Comptroller of Public Accounts; or

(ii) verification that the organization is on the comptroller's list of entities that have been provided a letter of exemption; such as, a printed copy of the Comptroller of Public Accounts Internet Web site listing the organization as exempt for hotel tax.

(E) For persons traveling on official business of an organization exempt by law other than Tax Code, Chapter 156:

(i) a letter of hotel tax exemption issued by the Comptroller of Public Accounts; or

(ii) verification that the organization is on the comptroller's list of entities that have been provided a letter of exemption.

(F) The manner of payment by an employee of an exempt organization does not affect the exemption. To claim an exemption a nonemployee traveling on behalf of an exempt organization must pay the hotel directly with the organization's funds, by organization check, organization credit card, or direct billing to the organization by the hotel.

(3) A hotel claiming exemption of its receipts from hotel occupancy tax must provide proof that the receipts were exempt, either through exemption certificates or other competent evidence.

(4) Certain entities that are exempt from hotel tax may be issued identification numbers for administrative purpose only. The comptroller may issue a tax number to an entity that is not exempt from Hotel Tax, and a tax number does not guarantee that an organization is exempt from Hotel Tax. An organization is not required to provide an identification number on the Hotel Tax Exemption Certificate.

(5) The exemption certificate must be substantially in the form provided by the Comptroller of Public Accounts and include:

(A) name and address of the exempt organization;

(B) qualification for exemption under Tax Code, §156.102 or §156.103 or other law; and

(C) name and signature of the occupant or, when the exempt organization issues the certificate, the name and signature of an authorized representative.

(6) Copies of the certificate may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528 or requested by calling 512-463-4600 or our toll-free number 1-800-252-1385. Taxpayers may download copies at [www.window.state.tx.us](http://www.window.state.tx.us).

(d) Exclusions.

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# Texas Administrative Code

TITLE 34

PUBLIC FINANCE

PART 1

COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3

TAX ADMINISTRATION

SUBCHAPTER K

HOTEL OCCUPANCY TAX

RULE §3.162

Hotel Occupancy Tax Base and Collection of the Tax

**(a) Tax Base.**

(1) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Charges for personal services--Charges which are unrelated to the cost of the actual occupancy of the room or rooms. Charges for personal services do not include charges which are related to the cleaning and readying of a room for occupancy.

(B) Occupancy--The use or possession, or the right to the use or possession, of any room or rooms in a hotel for any purpose.

(2) Charges subject to the tax. All charges for items or services, other than personal services or charges for the use of a telephone, which are furnished in connection with the actual occupancy of the room are subject to the hotel occupancy tax. The taxable charges include charges for the use of a television and charges for the furnishing of additional beds or cots. These charges are includable within the tax base whether or not separately stated.

Attached Graphic

(3) Charges not subject to tax. Charges for personal services are not subject to the hotel occupancy tax if they are separately stated. This includes charges for room service, messenger service, and valet service.

(4) Package deals. If a hotel includes meals, drinks, admission to tourist attractions, or any other unrelated benefit in the charge for lodging, hotel occupancy tax must be paid on the entire amount. Only if these charges are separately stated on the bill to the customer may they be deducted from the amount subject to tax.

**(b) Collection of Tax.**

(1) A charitable, eleemosynary, educational, or religious organization as defined in §3.161 of this title (relating to Definitions, Exemptions, and Exemption Certificate) that operates a hotel is not exempt from the requirement to report and pay hotel occupancy tax.

(2) The hotel occupancy tax must be collected for the rental of meeting and banquet rooms located in a building having sleeping accommodations.

(3) A person required to file a hotel occupancy tax report may withhold 1.0% of the tax due as shown on the report as reimbursement for the cost of collecting the tax. However, a person who fails to report the tax when due or fails to pay the tax within the required time may not claim the reimbursement.

**Source Note:** The provisions of this §3.162 adopted to be effective April 13, 1983, 8 TexReg 1028; amended to be effective December 5, 1996, 21 TexReg 11494

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<u>SUBCHAPTER K</u>	HOTEL OCCUPANCY TAX
RULE §3.163	Refund of Hotel Occupancy Tax

(a) State agency. A state agency is an agency, institution, board, or commission of the State of Texas other than an institution of higher education as defined in Education Code, §61.003.

(b) Refunds. A state agency may request a refund for each fiscal year quarter for the state hotel tax paid directly to a hotel or the amount of state hotel tax for which the agency reimbursed a state employee on a state travel voucher. A state agency that uses the Uniform Statewide Accounting System (USAS) will receive its state hotel tax refund by way of USAS. A state agency must directly contact the applicable city or county to apply for a refund of municipal or county hotel tax for which the agency reimbursed a state employee.

(c) Time limitation. A state agency may apply for a refund of state hotel tax no later than two years after the end of the fiscal year in which the travel occurred as provided by Government Code, Chapter 403, Subchapter E. A state agency may apply for a refund of municipal or county hotel occupancy tax for each calendar quarter according to the local city or county ordinance. In the absence of a local ordinance, the same time limitation that applies to the refund of state hotel tax will apply to municipal and county taxes.

(d) Documentation required.

(1) Documentation must be maintained to substantiate the claim, including a copy of the hotel folio, billing statement, invoice, or other document, that contains the following information:

- (A) name of the hotel;
- (B) location address of hotel;
- (C) name of city where hotel is located;
- (D) name of county where hotel is located;
- (E) date(s) of lodging;
- (F) amount of state, municipal, and county hotel tax paid separately stated;
- (G) method of payment (travel voucher reimbursement, state credit card, state purchase order, direct billing, other); and
- (H) name of employee, if tax reimbursed on travel voucher.

(2) A municipality or county may, by local ordinance, require additional documentation or require documentation be submitted with a claim for refund of local tax.

(e) Separate refund claim required. A separate refund claim form must be filed with each municipality or county.

(f) Form. Each claim for refund for state hotel occupancy tax must be filed on a form furnished by the

comptroller. The municipal and county hotel occupancy tax refund claim form, herein adopted by reference, must be substantially in the form set out as follows. Copies of the certificate are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling 512-463-4600 or our toll-free number 1-800-252-1385.

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**Source Note:** The provisions of this §3.163 adopted to be effective December 6, 1996, 21 TexReg 11494; amended to be effective October 17, 2001, 26 TexReg 8191; amended to be effective February 25, 2010, 35 TexReg 1467

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