

CHAPTER 38. HOTEL OCCUPANCY TAX

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Cross References

This chapter cited in 61 Pa. Code § 38a.1 (relating to scope and application of Chapter 38—Hotel Occupancy Tax—statement of policy).

§ 38.1. Imposition and computation of tax.

(a) Tax imposed upon occupants. An excise tax of 6% of the rent is imposed upon every occupancy by an occupant of a room in a hotel in this Commonwealth. The terms rent and occupancy are defined in § 38.3 (relating to definitions). The tax shall be collected by the operator of the hotel from the occupant at the time the rent is due, whether on a daily, weekly or biweekly rental period basis. In the absence of evidence to the contrary, it is presumed that the rent is due at the expiration of a rental period.

(b) Tax not imposed upon permanent residents. The tax is imposed upon occupants, and not upon permanent residents. Reference shall be made to § 38.3. A hotel operator may not collect tax upon the rent for a rental period during or at the expiration of which the lessee becomes a permanent resident. If a hotel operator collects tax in advance for a rental period which is or becomes exempt from tax by reason of the lessee’s becoming a permanent resident, the operator shall refund the tax so collected to the “permanent resident,” and may not report or remit each erroneously collected tax to the Department.

(c) Taxable rooms and facilities. The occupancy of a room in a hotel is subject to tax, including but not limited to sleeping rooms, living quarters, house-keeping accommodations, sample rooms, display rooms, function rooms, meeting rooms, banquet and dining rooms, ballrooms, theaters, auditoriums, kitchens, offices, lobby space, garage facilities and commercial establishments. The use or possession, or right to use or possess, furnishings, services and accommodations which accompany the use or possession of a room, is also considered occupancy and is subject to tax. Reference should be made to § 38.3.

Example. G rents facilities of the H Hotel for a party. In connection therewith, the hotel renders the following bill:

Rental of ballroom	\$500
Food and soft drinks	200
Liquor	100
Party favors	25
Services of hotel orchestra	200
Service charge	200

(1) The service charge item includes the furnishing by the hotel of waiters, kitchen help, barmen, checkroom girls and janitors, and the use of the hotel kitchen, checkroom, bar equipment, furniture, janitorial, facilities, glassware and the like.

(2) Hotel Occupancy Tax is due upon the following items:

Rental of Ballroom	\$500.
Service charge	200.

(3) Although the hotel separately itemizes the service charge for the services of hotel employes and the use of hotel facilities and property other than the ballroom itself, the furnishings, services and accommodations are deemed to accompany the use or possession of the ballroom, and the charge therefor is considered part of the rent. Reference should be made to § 38.3.

(4) With respect to the food, drinks, other than liquor, and party favors, the provisions of the sales and use tax portion of the TRC are applicable and the hotel is required to collect and remit sales tax upon 6% of the purchase price of these items.

(5) The services of the hotel orchestra are not deemed to accompany the use of the ballroom, since services are available to persons other than lessees of the ballroom and the charge made therefor is not less than that made to persons other than hotel occupants or residents. Reference should be made to § 38.3.

(d) *Property sold or leased.* Tangible personal property which is sold by a hotel operator may be subject to tax under the provisions of the sales and use tax portion of the TRC. Property which is furnished by a hotel operator for use by hotel occupants and residents or other persons, the use of which is not deemed to accompany the use of a room or rooms, so that the charge therefor is not considered part of the rent, may also be subject to sales and use tax. In such case, the operator is required to collect and remit the tax in accordance with the provisions of the sales and use tax portion of the act and to otherwise comply with the provisions of that act and of the regulations promulgated thereunder. Reference should be made to § 38.3.

Example. H hotel rents beach chairs to persons using its swimming pool, charging the same rate to hotel occupants and residents as to other persons. The furnishing of such beach chairs is not deemed to accompany the use of hotel rooms, and the charge made therefor is not rent. Reference should be made to § 38.3. Therefore, Hotel Occupancy Tax is not due upon such charges. However, the rental is subject to sales and use tax under the act, and H must collect the tax, remit it, and otherwise comply with the sales and use tax requirements.

(e) *Tax upon meals.* The sale of meals by a hotel for consumption upon hotel premises, is subject to tax when the price of the meal exceeds 10¢. This is imposed as a sales and use tax under the act and not as a Hotel Occupancy Tax,

and should be so reported to the Department. The tax is due upon meals sold both to hotel occupants and residents and to other persons.

(1) *Price of meals included in rental charges.* Where the amount charged by a hotel operator or rent includes the price of any meals, the tax upon the meals shall be separately reported. The charges for meals, when not separately stated and itemized by the operator, shall be presumed to be distributed as follows, unless, upon application of a hotel operator, the Department approves a different basis:

<i>Table 1—Meals included with room rent</i>	<i>Allocation of charges for rooms and meals</i>	
	<i>Room</i>	<i>Meals</i>
Breakfast only	90%	10%
Lunch or dinner only	75%	25%
Breakfast and dinner, or lunch & dinner	65%	35%
Breakfast, lunch and dinner	50%	50%

(2) *Exemptions from tax upon sale of meals.* The sales and use tax portion of the TRC makes provision for certain exemptions from the sales and use tax upon the sale of meals. Note that the exemptions do not apply to room rentals. Reference should be made to § 38.2. Those persons who under § 38.2 (relating to exemptions) are exempt from the Hotel Occupancy Tax under § 38.2 are exempt from tax upon their purchase of meals. However, the sale of meals to permanent residents, as that term is defined in § 38.2 is subject to tax even though the permanent resident may be excluded from tax on his room rentals. In addition, the sale of meals to a “religious organization,” “charitable organization,” or “nonprofit educational institution,” as those terms are defined in § 32.1 (relating to definitions) may be exempt from tax provided that the following requirements are met:

- (i) The organization or institution shall meet the terms of the definitions of “religious organization,” “charitable organizations,” or “nonprofit educational institutions,” as provided in § 32.1.
- (ii) The meals shall be sold to the organization or institution itself, and not to individual members of the organization or institution. The sale of meals to individual members of an organization or institution is subject to tax, even though the organization or institution to which they belong may be entitled to exemption from tax.
- (iii) The organization or institution shall furnish the hotel operator a properly executed exemption certificate. In the case of a charitable organization, the form shall contain a charitable exemption number. Provided that all of the foregoing requirements are met, a hotel operator may sell meals to an organization or institution without collection of sales tax. Note, however, that the exemption granted by the sales and use tax portion of the TRC is not

applicable to rentals of hotel rooms and facilities by such organizations and institutions. Thus, where a charge is made by the hotel operator for the use of dining or banquet rooms, meeting rooms, auditoriums, ballrooms, and the like, the rental charges are subject to hotel occupancy tax, even though the organization or institution renting the rooms or facilities is exempt from sales tax upon its purchase of meals.

(f) *Presumption of taxability.* For the purpose of proper administration of the tax, it is presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent or occupancy is not taxable is upon the operator.

Source

The provisions of this § 38.1 amended October 24, 1975, effective October 25, 1975, 5 Pa.B. 2844.

Cross References

This section cited in 61 Pa. Code § 38.3 (relating to definitions); and 61 Pa. Code § 38a.1 (relating to scope and application of Chapter 38—Hotel Occupancy Tax—statement of policy).

§ 38.2. Exemptions.

(a) *Permanent residents.* A permanent resident defined in § 38.3 (relating to definitions), is excluded from Hotel Occupancy Tax liability upon the occupancy of any room or rooms in a hotel for any rental period during which, or at the expiration of which, he is or becomes a permanent resident. This exclusion does not apply, however, to the purchase of meals or any other taxable purchase which may be made by a permanent resident.

(b) *Ambassadors, ministers and consular officers of foreign governments.* Ambassadors, ministers and other diplomatic representatives of foreign governments properly accredited to the United States, are exempt from tax upon their occupancy of rooms. This exemption does not apply to consular officers or to officers of foreign governments other than those specified in this section, unless such exemption arises from treaties or reciprocal agreements existing between such foreign governments and the United States.

(1) A person claiming exemption from the tax under this subsection is required to apply in writing therefor to the Bureau of Accounts Settlement, Department of Revenue, Harrisburg, Pennsylvania, Attention: Exemption Unit. Ambassadors, ministers and other diplomatic representatives of foreign governments should submit written proof that they are properly accredited to the United States. Consular officers and officials of foreign governments should submit written proof of the treaty or agreement under which similar exemption is granted by their country to consular officers and officials of the United States together with proof that such treaty or reciprocal agreement is presently in effect and that they are an officer or official entitled to prerogatives thereunder. If exemption has already been accorded under the sales and use tax portion of the TRC the numbered identification card is valid for hotel occupancy tax purposes.

(2) If the request for exemption is approved, a numbered identification card will be issued to the applicant. This card shall be shown by the exempt occupant to the hotel operator whenever a claim for exemption is made.

(c) *Occupancy of hotel rooms by United States Government.* Occupancy of hotel rooms by the United States Government shall be exempt from tax in accordance with the following:

(1) Occupancy of rooms by the Government of the United States, or its agencies, or by an employe or representative of the Government of the United States or its agencies, when the occupancy is solely for official purposes and the rent is paid by the Government of the United States or its agencies, is exempt from tax.

(2) Occupancy of rooms by National Banks, Federal Savings and Loan Associations, Joint Stock Land Banks, National Park Commissioners, or their employes or representatives, or by Federal licensees such as warehouses, stockyards, construction contractors engaged in the improvement of real estate owned by a Federal agency, or similar corporations, companies, institutions, or persons, or their employees or representatives, regardless of the purpose of the occupancy, is not exempt from the Hotel Occupancy Tax. Members of the Armed Forces are not exempt from tax upon occupancy of rooms unless acting as authorized representatives of the Government of the United States or one of its agencies and are otherwise entitled to exemption under the provisions of paragraph (1).

(d) *Occupancy of hotel rooms by other exempt entities.* Occupancy of rooms, the charges for which are billed to and paid by the following organizations, shall be exempt from tax. Charges paid by employes or other agents of these organizations shall be subject to tax even though the employe or agent is reimbursed by the exempt organization:

(1) Federal Credit Unions organized under the provisions of the Federal Credit Union Act (12 U.S.C.A. §§ 1751—1795k).

(2) Commonwealth credit unions formed and incorporated under Credit Union Act (15 P. S. §§ 12301—12333).

(3) Public authorities created under the act of June 28, 1935 (P. L. 463) and the Municipal Authorities Act of 1945 (53 P. S. §§ 301—322).

(4) Co-operative agriculture associations required to pay corporate net income tax under the provisions of the Co-operative Agricultural Association Corporate Net Income Tax Act (72 P. S. §§ 3420-21—3420-30).

(5) Electric cooperative corporations formed under the Electric Cooperative Corporation Act (15 P. S. §§ 12401—12438).

(6) Another organization claiming an exempt status under a particular statute shall make application to the Bureau of Sales and Use Tax, Attn: Legal Division) for approval to use the exemption.

(e) *Records of exempt occupancies.* The hotel operator shall maintain records to support and identify exempt occupancies. Exemption certificates, letters of exemption, direct payment permits and other documents relating to exemptions

from tax issued under the provisions of the sales and use tax portion of the TRC or regulations promulgated thereunder, are of no force and effect with respect to the tax imposed by the hotel occupancy tax portion of the act with the exception noted in subsections (b) and (d).

(f) *Others not exempt.* No person or entity other than those referred to in this section may be exempt from the Hotel Occupancy Tax. Occupancy by employes or representatives of the Commonwealth, its instrumentalities or political subdivisions, is not exempt from hotel occupancy tax, regardless of the nature of the business upon which the employee or representative is engaged, and regardless of the identity of the person or agency paying for the occupancy. Occupancy by employes or representatives of State credit unions is not exempt from the tax. Exemption from the sales and use tax portion of the TRC granted to persons, organizations or institutions, including exemptions granted to religious organizations, charities, educational institutions and the like, are not applicable to the Hotel Occupancy Tax, and those persons, organizations or institutions are required to pay tax upon their occupancy of hotel rooms.

Source

The provisions of this § 38.2 amended through October 24, 1975, effective October 25, 1975, 5 Pa.B. 2844.

Notes of Decisions

It was improper for the Department to collect State hotel occupancy taxes from Sheraton Hotel guests who were on official United States government business, and it was not necessary that the United States government be billed directly as opposed to the employes paying themselves and receiving reimbursement from the government. *Egner v. Commonwealth*, 557 A.2d 1157, 1159 (Pa. Commw. 1989).

Cross References

This section cited in 61 Pa. Code § 38.1 (relating to imposition of computation of tax); 61 Pa. Code § 38.3 (relating to definitions); and 61 Pa. Code § 38a.1 (relating to scope and application of Chapter 38—Hotel Occupancy Tax—statement of policy).

§ 38.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Department—The Department of Revenue of this Commonwealth.

Hotel—A building in which the public may, for a consideration, obtain sleeping accommodations, including establishments such as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and other building or group of buildings in which sleeping accommodations are available to the public for periods of time less than 30 days.

(i) An establishment which has accommodations available to the general public as sleeping quarters for periods less than 30 days, is a hotel within

the meaning of this definition, even though the establishment may have other accommodations which are used for purposes other than sleeping quarters, and even though the establishment may have other sleeping quarters which are available only for periods of 30 days or more.

(ii) An establishment such as a public summer camp which has any permanent buildings available to the public for use as sleeping quarters, may be a hotel, even though some of its accommodations may be temporary structures, such as tents.

(iii) A private organization or institution which, in the ordinary course of its activities, provides sleeping accommodations to persons directly associated with it, is not a hotel. Where, however, an organization or institution, offers or makes available sleeping accommodations for the general public for periods less than 30 days, the organization or institution is considered to be operating a hotel with respect to all occupancies.

Example 1. An apartment hotel which rents certain apartments or rooms for occupancy on a week-to-week basis, or for other periods less than 30 days, is a hotel, even though it has other apartments or rooms leased only on a month-to-month basis, or for other periods of 30 days or more. For the purpose of registration, the entire establishment is considered a hotel.

Example 2. A public summer camp or resort which has certain permanent buildings available for occupancy as sleeping quarters, and which also has tents or other temporary structures available for use, may be a hotel if its accommodations are available to the public for less than 30 days. However, where a camp has available only temporary structures for use as sleeping quarters that is, all of its sleeping quarters consist of tents or other temporary structures, it is not a hotel within the meaning of the regulation, even though the camp may have other buildings such as dining halls, meeting rooms and the like, which are permanent structures.

Example 3. Summer camps for children which provide a program of planned instruction or training, including but not limited to physical or mental rehabilitation which the campers are required to pursue under the supervision of trained counselors, are not hotels within the meaning of section 209(1) of the TRC (72 P. S. § 7209). Accordingly, the camps are not required to register, collect or remit hotel occupancy tax.

Example 4. A single building which contains both rooms used as sleeping accommodations and rooms used for other purposes may be a hotel. Thus, where the lower floor of a building is used for rental to commercial establishments, and the upper floors are used for rental as sleeping accommodations to the public for periods less than 30 days, the building is a hotel for tax purposes.

Example 5. A hospital, nursing home, convalescent home, mental institution or other institution dedicated to the care and treatment of the sick under medical supervision, is not a hotel even though it provides sleeping accom-

modations for patients, doctors, nurses, students, employes and other persons associated with the institution. Similarly, where a private business provides sleeping accommodations for its employes, it is not a hotel. Where, however, an organization or institution provides accommodations to the general public as, for example, the providing of sleeping accommodations by a YMCA, or so-called health resort or spa, for periods less than 30 days, it is operating a hotel.

Example 6. A school, college, university, convent, monastery or other educational or religious institution, which provides sleeping accommodations for the use of persons who are participating in its educational or religious activities, is not a hotel. For example, where a university provides sleeping accommodations to persons who are attending a conference or convention sponsored by the institution, or to parents of students of the institution, it is not a hotel. A public summer camp conducted by an organization enumerated above, where the activity of such organization is carried on as an integral part of the camp life, is not a hotel.

Example 7. A private club which restricts the use of its sleeping accommodations to its own employes and members is not considered to be a hotel within the meaning of the Hotel Occupancy Tax portion of the TRC and need not register nor collect tax from persons. However, where a club permits its sleeping accommodations to be used by nonmembers and the billing for the occupancy is made to and paid by a nonmember, the club is considered to be a hotel and shall collect tax with respect to occupancies, other than permanent residents, including occupancies by its membership. Charges for occupancies shall be billed to club members for the organization to retain its exempt status.

Occupant—A person, other than a permanent resident as defined by § 38.2 (relating to exemptions), who, for a consideration, uses, possesses or has a right to use or possess, a room or rooms in a hotel under a lease, concession, permit, right of access, license or agreement. A person may be an occupant as defined herein, even though he does not use and does not intend to use a room or rooms as sleeping accommodations.

Example 1. A salesman who rents a sample room in a hotel is an occupant. An organization which rents a ballroom in a hotel is an occupant. In deciding whether a particular establishment is a hotel, as defined in this section, it is necessary to determine whether the establishment has sleeping accommodations available. But in deciding whether a particular person is an occupant, it is only necessary to find that he uses, possesses or has a right to use or possess a room or rooms in a hotel. It is not necessary that the room or rooms be sleeping accommodations.

Example 2. A public summer camp which has both temporary and permanent sleeping quarters available for occupancy for periods less than 30 days,

is a hotel. Persons who occupy camp facilities for periods of less than 30 days are considered occupants, even though they occupy temporary sleeping quarters.

Occupancy—The use or possession, or the right to the use or possession by a person, other than a permanent resident of any room or rooms in a hotel for any purpose, or the right to the use or possession of the furnishings, services, and accommodations which accompany the use and possession of the room or rooms. Furnishings include, but are not limited to, property such as furniture, including radios, television sets, and air conditioners, utensils, glassware, linens, towels, athletic and sporting equipment, recreational equipment, stationery and stationery supplies, and other property furnished by the hotel for the use of hotel occupants and maid and porter service, towel and linen service, doormen, bellmen, elevator service, parking service, and any other services, facilities, or accommodations, including secretarial or commercial services, garage accommodations, theater ticket service, transportation service, swimming and athletic facilities, locker rooms, recreational facilities, parcel checking service, delivery service, and health facilities which are offered by the hotel for the exclusive use of hotel occupants and residents without any charge in addition to that normally made for the room or rooms occupied by such persons, or at a rate less than that charged to persons who are not hotel occupants or residents.

Operator—A person operating a hotel as defined in this section.

Permanent resident. A person who has occupied or has had the right to occupy a room or rooms in a hotel for 30 consecutive days or more.

(i) After a person has occupied or had the right to occupy for thirty consecutive days, he is no longer an occupant as defined by this section. His status as a permanent resident is effective for the rental period during which, or at the expiration of which, the 30th consecutive day of occupancy is completed, and continues thereafter so long as his occupancy remains continuous and uninterrupted. Thus, if a person completes his 30th day of consecutive occupancy during, or at the expiration of a particular rental period, he is a permanent resident for that entire rental period, even though, during a part of the period, he had not yet established his status as a permanent resident, and for each rental period thereafter in which his occupancy continues uninterrupted. He is not a permanent resident, however, as to any rental period prior to the particular rental period during or at the expiration of which, he completed his 30th day. As to such prior rental periods, he was and remains an occupant. Reference should be made to Example 1 of this definition.

(ii) A rental period, for the purposes of this subchapter, is a period of time, for example, a day, week, month, or the like during which, under and subject to the terms of a legally enforceable contract, an occupant has a continuous right to occupy a room or rooms in a hotel and is legally bound to pay rent therefor. (In the absence of evidence to the contrary, it is presumed that a rental period runs from the date of first occupancy or first payment of

rent, to the date of a subsequent payment of rent.) A mere statement of intention to occupy, or to permit occupancy, on the part of an occupant or hotel operator, or both, does not create a rental period unless the period in question is the subject of a legally enforceable contract.

(iii) The occupancy or right of occupancy shall be for 30 consecutive days. A person who merely has a right to use a room or rooms on intermittent days of a week or month cannot become a permanent resident, even though he cumulatively occupies for more than 30 days.

(iv) The status of permanent resident only continues so long as the occupancy or right of occupancy continues uninterrupted. A permanent resident who quits his hotel and breaks his consecutive and continuing occupancy, loses his status as permanent resident, and, with respect to his next occupancy, he does not resume his status as a permanent resident unless and until he again completes 30 consecutive days of occupancy. A transfer from one hotel to another, even though both hotels are owned by the same operator, is a break in occupancy; however, a mere change of rooms in the same hotel is not a break in occupancy.

Example 1. G occupies a room on a week-to-week contract. At the end of each of the first 4 weekly rental periods, G is an occupant, and not a permanent resident, since he has not completed 30 consecutive days of occupancy during or at the expiration of any of those weeks. At the end of the second day of the fifth week, G completes 30 consecutive days and becomes a permanent resident. He is a resident and not an occupant as of the entire fifth week, and for each week thereafter during which he continues to have an uninterrupted right of occupancy. As to the first 4 weeks, however, he was and is an occupant.

Example 2. G occupies a room on a month-to-month contract. At the end of the first monthly rental period, G is a permanent resident, and this status is applicable to the first month, and to every month thereafter during which G continues to have an uninterrupted right of occupancy. Therefore, G is never an occupant.

Example 3. S, a student, takes a room on a week-to-week basis in a rooming house. S tells his landlady he intends to keep the room for a full semester; however, he has no legally enforceable right to do so, and his landlady has no legally enforceable right to have him do so. He therefore occupies upon a weekly rental period; he is a permanent resident as of the fifth week. Reference should be made to Example 1 of this definition. At the end of the semester, S returns to his home, and although S tells his landlady he wishes to resume his occupancy when he returns to school, S pays no rent for the interim period and has no right to occupy the room during that period. Since there is a break in S's occupancy, S has lost his status as permanent resident, and upon his resumption status as permanent resident, and upon his resump-

tion of occupancy on the same rental period basis, he will again be considered an occupant for the first four weekly rental periods.

Person—A natural person, firm, partnership, association, corporation, fiduciary or other entity. Whenever used in any provision of the Hotel Occupancy Tax portion of the TRC which prescribes or imposes a fine or imprisonment, or both, the term person as applied to a firm, partnership or association, shall include the members thereof and, as applied to a corporation, the officers thereof. A firm, partnership, association or a corporation may be subjected as an entity to the payment of a fine.

Rent—The consideration received for occupancy as defined in this section valued in money, whether actually received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature. Also, any amount for which an occupant is liable for occupancy, as defined herein, without any deduction therefrom whatsoever.

(i) The entire amount charged by a hotel operator for occupancy, as that term is defined in this section, constitutes rent under the law. Charges for services, facilities or accommodations which are offered by the hotel for the exclusive use of hotel occupants, or which are furnished by the hotel to occupants without any charge in addition to that normally made for the room occupied by the persons, or at a rate less than that charged to persons who are not hotel occupants or residents, are deemed to be a part of the rent. This is true whether charges for such services, facilities or accommodations are separately stated and itemized or not.

(ii) Services and accommodations which are available to the general public as well as to the hotel occupants or residents, and for which the hotel makes a charge to occupants or residents at least equal in amount to the charge made to persons who are not hotel occupants or residents, are not deemed to accompany the use or possession of a hotel room, and the charges made for the services and accommodations are not considered part of the rent, if the charges are separately stated and itemized. However, a lump sum is presumed to be rent, even though the lump sum may include charges for services and accommodations which, if separately stated and itemized, would not be considered part of the rent.

(iii) With respect to the computation, collection, reporting and remittance of tax upon rental charges which include a charge for meals, reference should be made to § 38.1 (relating to imposition and computation of tax).

Tax—Any tax, interest or penalty imposed or levied under the provisions of Article II of the TRC (72 P. S. §§ 7201—7282).

Source

The provisions of this § 38.3 amended April 12, 1974, effective April 13, 1974, 4 Pa.B. 691.

Cross References

This section cited in 61 Pa. Code § 38.1 (relating to imposition of computation of tax); and 61 Pa. Code § 38.2 (relating to exemptions).

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