

**CHAPTER 38a. HOTEL OCCUPANCY TAX PRONOUNCEMENTS—
STATEMENT OF POLICY**

Sec.
38a.1. Scope and application of Chapter 38a—Hotel Occupancy Tax—statement of policy

Source

The provisions of this Chapter 38a adopted October 26, 2001, effective October 27, 2001, 31 Pa.B. 5949, unless otherwise noted.

§ 38a.1. Scope and application of Chapter 38—Hotel Occupancy Tax—statement of policy.

(a) *Generally.* This section is issued by the Department to clarify the scope and application of Chapter 38 (relating to Hotel Occupancy Tax). Chapter 38 applies solely to the Hotel Occupancy Tax imposed by section 210 of the TRC (72 P. S. § 7210). The regulations do not, and statutorily could not, apply to any hotel tax imposed by any county government of this Commonwealth under other laws enacted by the General Assembly.

(b) *Enabling statute for Hotel Occupancy Tax.* Under section 210 of the TRC, the General Assembly has imposed “an excise tax of six per cent of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid over to the Commonwealth” as provided by the TRC. It is the responsibility of the Department to collect for the Commonwealth all taxes imposed by Article II of the TRC, including the Hotel Occupancy Tax. See 72 P. S. §§ 7270—7277 (relating to enforcement and examinations).

(c) *Enforcement and regulatory responsibility with regard to Hotel Occupancy Tax statute.*

(1) *Enforcement.* As part of its responsibility to enforce and administer the taxes imposed by Article II of the TRC, the Department is authorized and empowered by section 270(a) of the TRC (72 P. S. § 7270(a)) to prescribe rules and regulations relating to the administration and enforcement of Article II.

(2) *Exemptions.* Acting under its authority under section 270(a), the Department promulgated Chapter 38. Section 38.1 (relating to imposition and computation of tax) prescribes rules and methods for the imposition and computation of the Hotel Occupancy Tax. Section 38.2 (relating to exemptions) establishes certain exemptions from the Commonwealth’s Hotel Occupancy Tax. Under § 38.2, there are exemptions provided for permanent residents; ambassadors, ministers and consular officers of foreign governments; occupancies of hotel rooms by United States Government personnel; and occupancies of hotel rooms by other exempt entities. See § 38.2(a)—(d).

(3) *Requirement.*

(i) Having listed in § 38.2 the hotel occupancies exempt from the Hotel Occupancy Tax, the Department included a final subsection providing explicitly certain hotel occupancies that are not exempt from the Hotel Occupancy Tax. Section 38.2(f) provides as follows:

(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 employees 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 employees 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.

(ii) As is true of all of Chapter 38, § 38.2(f) applies solely and exclusively to the Hotel Occupancy Tax imposed by section 210 of the TRC and collected by the Department.

(d) *Applicability of § 38.2 to certain county taxes.*

(1) Several county governments of this Commonwealth have cited to § 38.2(f) as their authority to impose and collect certain county taxes imposed on hotel room rentals made to officials and employees of the Commonwealth while engaged in official Commonwealth business. These counties have refused to honor exemptions from the county taxes claimed by the Commonwealth and have cited to § 38.2(f) as their legal basis for refusing the claimed exemptions.

(2) As the agency that promulgated § 38.2(f) and administers and enforces the Commonwealth's Hotel Occupancy Tax imposed under the TRC, the Department issued this section to make clear the limited scope and applicability of Chapter 38. Promulgated by the Department under its authority under the TRC solely to enforce and administer the Hotel Occupancy Tax imposed by section 210 of the TRC, Chapter 38 of the Department's regulations has, and statutorily could have, no application to taxes imposed by county governments under separate statutory authority. Therefore, § 38.2(f) cannot properly be cited as a basis for a county government to impose a hotel room rental tax upon a Commonwealth official or employee staying overnight in a hotel in the course of performing official Commonwealth business.

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