

LLANO COUNTY HOTEL OCCUPANCY TAX RULES AND REGULATIONS

Chapter 352.002 of the Texas Tax code was amended to add SB 213, subsection (a) (22), “a county that has a population of more than 15,000 but less than 20,000 and borders Lake Buchanan,” and subsection (f), “The tax imposed by a county authorized by subsection (a) (22) to impose the tax does not apply to a hotel located in a municipality.”

These rules and regulations are entitled “Occupancy Tax”, containing therein definitions; levying a tax equal to four percent (4%) of the consideration of the cost of occupancy of any room or space in any hotel with certain exceptions; providing for collection; requiring reports; authorizing the Commissioners Court to make rules and regulations and the County Treasurer to administer said rules and regulations; describing violations; providing for penalties; providing for an effective date; and providing for severability.

SECTION 1 - DEFINITIONS

The following words, terms and phrases are, for the purpose of these regulations, except where the context clearly indicates a different meaning, defined as the following:

Hotel – *A hotel is a building in which members of the public obtain sleeping accommodations for consideration.* The following businesses are considered **hotels** and are required to charge the tax: hotels, motels, tourist homes, tourist courts, lodging houses, inns, condominiums, cabins, cottages, manufactured homes, rooming house, skid mounted bunkhouses, or bed and breakfasts. *The failure to name specific types of accommodations does not exempt a business from the tax.*

Hospitals, sanitariums, nursing homes, dormitories or other non-hotel housing facilities owned by institutions of higher education may not charge the tax.

While recreational vehicles (RVs) and RV rental spaces are not expressly listed in the statute, the State Comptroller’s office has interpreted the statute to exclude RVs and RV lots from taxation.

Consideration – The tax may be imposed against any “person” (including corporations and other legal entities) who pays for the use of a room in a hotel. The price of the room does not include the cost of food served by the hotel or the cost of other personal services.

Occupancy – Unlike the state hotel occupancy tax, the local hotel occupancy tax may only be assessed against the use of a room that is ordinarily used for sleeping.

Occupant – shall mean any person, (including corporations and other legal entities) who pays for the use of a room in a hotel. The price of the room does not include the cost of food served by the hotel or the cost of other personal services.

Treasurer – shall mean the Llano County Treasurer or her/his designated agent(s) or agencies.

Reporting Period – shall mean the same reporting period required by the State hotel occupancy tax.

SECTION 2 – LEVY OF TAX; RATE; EXCEPTIONS

There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel in Llano county, outside the city limits of a municipality, where such cost of occupancy is at the rate of Two Dollars (\$2.00) or more per day, such tax to be equal to 4% of the consideration paid by the occupant of such room to such hotel. Hotel operators are authorized to retain 1% of the amount of the hotel occupancy tax collected as reimbursement for the costs of collecting the tax, when paid by the due date.

HOTEL TAX EXEMPTIONS

There are four types of guests who may claim exemption from state hotel tax: certain nonprofit organizations; government; specific nonprofit entities; and permanent residents.

Employees of nonprofit qualifying organizations are also exempt when traveling on official business of the organization. Representatives claiming an exemption who are not employees of the organization must pay with the organization's funds (check, credit card, or direct billing) to obtain the exemption.

NONPROFIT RELIGIOUS, CHARITABLE, OR EDUCATIONAL ORGANIZATIONS

Employees and representatives of nonprofit religious, charitable, or educational organizations are exempt from the state hotel tax when traveling on official business of the organization. *The exemption does not cover local hotel taxes, which must be paid.*

For purposes of hotel tax exemption, religious organizations are nonprofit churches and their guiding or governing bodies. Missionary organizations, Bible study groups, or churches that are made up of only family members do not qualify.

Charitable organizations are nonprofit organizations that devote all or substantially all of their activities to providing such things as food, clothing, drugs, shelter, or psychological counseling directly to indigent and similar individuals for little or no charge. Not included are fraternal organizations and social, professional, and business groups.

Educational organizations include independent school districts, public or nonprofit private elementary and secondary schools, and Texas institutions of higher education.

To take advantage of the exemption from hotel tax, a nonprofit organization must have an exemption letter from the Comptroller's office. Qualifying organizations must apply for and receive a specific exemption from hotel tax.

Government

Employees of U.S. government agencies (including military personnel) traveling on official business are exempt from *state and local hotel taxes*.

With few exceptions, employees of state agencies, boards, commissions, and institutions are not exempt and must pay state and local hotel taxes. Texas state agencies may request a refund of the hotel tax paid.

Designated Texas state employees - mostly judicial officials, heads of agencies, and members of state boards and commissions and the Texas Legislature - are issued a special hotel tax exemption photo ID or card and are exempt from the state, city, and county hotel taxes.

Contractors working for the State of Texas or the federal government are not exempt.

Diplomatic personnel with a tax exemption card issued by the U.S. Department of State are exempt from state, city, and county hotel taxes, unless the card specifically excludes hotel taxes.

Employees of city and county governments are not exempt from state and local hotel taxes.

Specific Nonprofit Entities

When traveling on official business, employees of some nonprofit entities are exempt from *state and local hotel taxes*. The qualifying entity must have a letter of hotel tax exemption issued by the Comptroller's office.

Based on the Comptroller's office records, examples include certain nonprofit electric cooperatives, nonprofit telephone cooperatives, nonprofit housing authorities, housing finance corporations, public facility corporations, health facilities development corporations and cultural educational facilities finance corporations.

The employee should write the reason for exemption on the certificate. For example, "exempt per Electric Cooperative Act, Utilities Code, Chapter 161" or "exempt per Telephone Cooperative Act, Utilities Code, Chapter 162."

Permanent Residents (30-Day Rule)

Guests who occupy a hotel room for 30 or more consecutive days are considered permanent residents and are exempt from hotel tax. There can be no interruption of payment during that period.

Guests who notify the hotel in writing of their intention to stay 30 or more consecutive days will be exempt from the date of notification. Guests who do not notify the hotel must pay the tax for the first 30 days and thereafter will be exempt.

Exemption Certificates

Anyone claiming a hotel tax exemption must provide a **Texas Hotel Occupancy Tax Exemption Certificate**. Hotels must keep a copy of the signed certificate to show why tax was not collected. One exemption certificate can be used to claim exemption for more than one room. Exemption certificates can be accepted in good faith **when presented with the following supporting documentation**:

- federal employees traveling on government business - a valid government identification card;
- designated Texas state employees - a special hotel tax exemption photo ID or card that states holder is exempt from hotel occupancy taxes;
- foreign diplomats - a tax exemption card issued by the US Department of State that exempts diplomat or mission from hotel occupancy tax, unless the card specifically excludes hotel tax;

employees and representatives of a specific nonprofit entity or a nonprofit charitable, educational, or religious organization traveling on organization business - a Comptroller's letter of hotel tax exemption or verification that the organization is on the Comptroller's list of exempted entities, such as a printed copy of the Comptroller's website listing the organization as exempt for hotel tax.

For the online list of organizations that have received a letter of hotel tax exemption, visit the Comptroller's Web site at

See **Comptroller Rule 3.161** for definitions of exempt organizations. For more information on qualifying and applying for a letter of exemption, visit the Comptroller's website at <http://window.state.tx.us/taxinfo/exempt/index.html>, or contact the Comptroller's office toll-free at 1-800-252-1385.

Llano County may not authorize additional exemptions from the hotel occupancy tax per the **Attorney General ruling, JM-865 (1988)**.

SECTION 3 - COLLECTION

Every Person owning, operating, managing or controlling any hotel, shall collect the tax imposed in Section 2 hereof for the County of Llano. The hotel occupancy tax is paid by the hotel customer to the hotel.

SECTION 4 – REPORTS

The county hotel occupancy tax reporting period shall be based on the same reporting period required by the state hotel occupancy tax. If monthly reporting is required, the report and payment is due by the 20th of the following month. If reporting quarterly, the report and payment is due by the last day of the month following the end of the quarter. Every entity required to collect the tax imposed by this regulation shall file a report with the Llano County Treasurer showing the consideration paid for all room occupancies in the reporting period, the amount of tax collected on the county's behalf on such occupancies, and any other related information the Llano County Treasurer may reasonably require. A copy of the corresponding **Texas Hotel Occupancy Tax Report** filed with the **State Comptroller** must be included with the report. Payment of tax due is required at time of filing.

SECTION 5 – RULES AND REGULATIONS

The Llano County Treasurer shall have the authority to administer rules and regulations as set by Llano County Commissioners Court, as are necessary to effectively collect the tax levied herein.

SECTION 6 – PENALTIES

The local hotel occupancy tax statutes provide for specific penalties that may be assessed against hotel operators who fail to report or to pay taxes when due or who file fraudulently.

Llano County imposes a penalty of five percent (5%) of the amount of the taxes due, if the hotel operator fails to file a report and make payment by the due date following each reporting period. If the hotel operator fails to file the report or to pay the tax within 31 days, then an additional five percent (5%) penalty will be assessed. After sixty (60) days, interest at a rate of ten percent (10%) a year will also be added to the taxes and accrued penalties owed.

Llano County may request hotel occupancy tax audit information from the **State Comptroller**. The County will keep such information confidential and use the information only for enforcement or administration of the County's hotel tax.

SECTION 7 – VIOLATIONS

Llano County may take the following actions against a hotel operator who fails to report or collect the local hotel occupancy tax:

1. File a civil suit for noncompliance;
2. Ask the district court to enjoin operation of the hotel until the report is filed and taxes paid; and

3. Any other remedies provided under Texas law that are applicable to Counties and this tax

(The most noteworthy of the remedies is the ability of the County to request that the District Court close down the hotel if the hotel occupancy taxes are not turned over.)

SECTION 8 – EFFECTIVE DATE

These Rules and Regulations shall become effective on **January 1, 2008**.

SECTION 9 – SEVERABILITY

In any provision, section, sentence, clause, or phrase of this Regulation, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid or unenforceable, the validity of the remaining portions of this Regulation or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the Llano County Commissioners Court in adopting, and of the County Judge in approving this Regulation, that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

PASSED and APPROVED by Llano County Commissioners Court this _____ day of _____, 2007.

ATTEST:

County Judge _____

County Clerk _____
Bette Sue Hoy