
MEETING NOTICE

The Hotel Occupancy Tax Committee of the City of Woodcreek, Texas will conduct a meeting at Woodcreek City Hall, 41 Champions Circle, Woodcreek, TX 78676. The meeting will be held on Wednesday, March 01, 2023 at 3:00 PM.

All attendees are encouraged to wear face coverings when a minimum of six-foot social distancing cannot be maintained. Smoking is not allowed anywhere on the property of City Hall.

The public may watch this meeting live at the following link:

<https://www.microsoft.com/microsoft-teams/join-a-meeting>;

Meeting ID: 252 081 322 718; Passcode: T5f7Nv

A recording of the meeting will be made and will be available to the public in accordance with the Texas Public Information Act upon written request. This notice, as amended, is posted pursuant to the Texas Open Meetings Act (Vernon's Texas Codes Ann. Gov. Code Chapter 551).

The City of Woodcreek is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please call the City Secretary's Office at 512-847-9390 for information. Hearing-impaired or speech disabled persons equipped with telecommunications devices for the deaf may call 7-1-1 or may utilize the statewide Relay Texas program at 1-800-735-2988.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

It is anticipated that members of other City Boards, Commissions, Panels and/or Committees may attend the meeting in numbers that may constitute a quorum of the other City Boards, Commissions, Panels and/or Committees. Notice is hereby given that this meeting, to the extent required by law, is also noticed as a meeting of the other City Boards, Commissions, Panels and/or Committees of the City, whose members may be in attendance. The members of the City Boards, Commissions, Panels and/or Committees may participate in discussions on the items listed on this agenda, which occur at this meeting, but no action will be taken by those in attendance unless such action item is specifically listed on an agenda during a regular or special meeting for the respective Board, Commission, Panel and/or Committee subject to the Texas Open Meetings Act.

The City Council may retire to Executive Session any time during this meeting, under Texas Government Code, Subchapter D. Action, if any, will be taken in open session.

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

Any citizen shall have a reasonable opportunity to be heard at any and all meetings of the Governing Body in regard to: (1) any and all matters to be considered at any such meeting, or (2) any matter a citizen may wish to bring to the Governing Body's attention. No member of the Governing Body may discuss or comment on any citizen public comment, except to make: (1) a statement of specific, factual information given in response to the inquiry, or (2) a recitation of existing policy in response to the inquiry. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting per Texas Local Government code Sec. 551.042

Citizen comments will be allowed at the beginning of every meeting, or alternatively, before an item on the agenda upon which the citizen wishes to speak is to be considered. All citizens will be allowed to comment for **three (3) minutes** per person and shall be allowed more time at the Mayor or Chair's discretion. In addition, citizens may pool their allotted speaking time. To pool time, a speaker must present the names individuals present in the audience who wish to yield their three(3) minutes. Citizens may present materials regarding any agenda item to the City Secretary at or before a meeting, citizens attending any meeting are requested to complete a form providing their name, address, and agenda item/concern, but are not required to do so before speaking and presenting it to the City Secretary prior to the beginning of such meeting. Comments may only be disallowed and/or limited as per Government Code § 551.007(e).

Submit written comments by email to woodcreek@woodcreektx.gov by **NOON**, the day prior to the meeting. Please include your full name, home or work address, and the agenda item number. Written comments will be part of the official written record only.

AGENDA

CALL TO ORDER

ROLL CALL and ESTABLISH QUORUM

PUBLIC COMMENTS

CONSENT CALENDAR

SPECIAL ORDERS

1. Introduction of Committee Chair, Vice-Chair and Committee Members.
2. Introduction to Committee Liaisons and Discussion of Group Roles and Responsibilities.

UNFINISHED BUSINESS AND GENERAL ORDERS

NEW BUSINESS

3. Review Governing Ordinance For the City of Woodcreek. (§Chapter 110)
4. Review H.O.T. Laws and Uses of H.O.T. Funds.
 - a. Texas State Comptroller: H.O.T. History, Uses and F.A.Q.s
 - b. Texas Administrative Code, Chapter 3, Subchapter K, Hotel Occupancy Tax
 - c. Texas Municipal League: What Cities Need To Know To Administer Municipal H.O.T.
5. Discuss and Take Appropriate Action On the Creation of A Mission Statement For the H.O.T. Committee.
6. Discuss and Take Appropriate Action on Future Meeting Schedule and Agenda Content.

ANNOUNCEMENTS

ADJOURN

POSTING CERTIFICATION

I certify that the above notice was posted on the **24th day of February, 2023 at 5:00PM**

By: 
Suzanne J. MacKenzie, City Secretary

Council Liaisons 411

Goal:

To facilitate two-way communication between City Council and all City boards, panels, committees, and commissions.

Role:

Working in coordination with the chair of the board, panel, committee, or commission, assist in generation of agenda items and packet materials for both City Council meetings and the meetings of the respective board, panel, committee, or commission.

Attend designated board, panel, committee, or commission meeting to answer questions during discussion or clarify motions and requests sent by Council.

Provide discussion and reports on items sent from their respective boards, panels, committees, and commissions to City Council.

Guidelines:

ALL City boards, panels, committees, and commissions shall function autonomously. They will set their own agendas and run their own meetings. Liaisons are NOT to be running their assigned boards, panels, committees, and commissions, nor are they to be setting agendas. They are to be resources to their respective City body.

Liaisons shall NOT influence voting or sway discussion beyond factual statements or clarification on items sent from Council. Liaisons are NOT members of the board, panel, committee, or commission; nor are they “ex officio.” Liaisons do not have any voting power beyond their role on City Council.

Liaisons should share only the discussion, concerns and/or requests from the full body of Council on an item sent to their designated board, panel, committee, or commission. Their representation on the board is not to be used to pursue their own goals or as a second chance to voice their concerns or opinion on an item beyond a City Council meeting.

If asked, liaisons are permitted to share their own opinion or judgement-based information during a meeting or on an agenda item, but they should refrain from offering this type of advice or influence without being first requested.

When representing their respective board, panel, committee, or commission to City Council in the form of a report or while answering questions on an item sent to Council, liaisons shall remain objective and factual. Councilmember liaisons shall work to support the efforts of their board, panel, committee, and commission and advocate for their work, but are not obligating their vote on City Council in support or against any item simply because they are the Council liaison for the board, panel, committee, or commission from which it came.

Communication Flow:

Agenda packets, and the materials included, are a primary focus for liaisons.

The chair of any board, panel, committee, or commission shall make every effort to send a draft of their proposed upcoming agenda to their designated liaison so that the liaison can collect and provide additional information and materials as needed. The purpose of this collaboration is to improve and facilitate communication on items that are sent between said boards, panels, committees, and commissions and the City Council. If desired, the Chair may ask assistance in drafting the agenda.

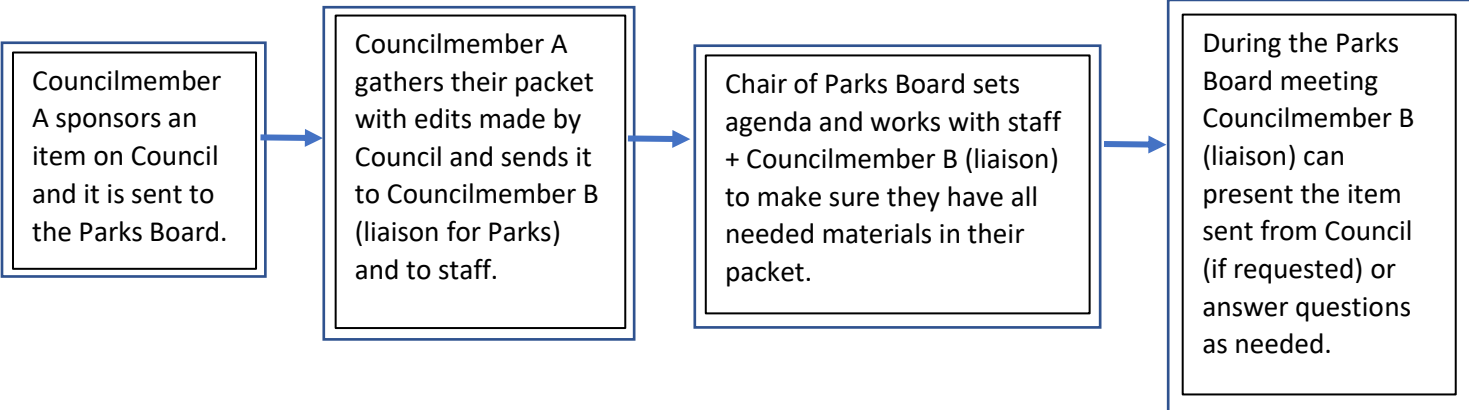
Liaisons shall remind the chair of their designated board, panel, committee, or commission about pending business sent from Council and in turn shall monitor any items sent from their designated board, panel, committee, and commission to be placed on the Council agenda.

City Staff will be responsible for communication between City Council and all boards, panels, committees, and commissions. They are responsible for tracking the flow of city business. However, the designated liaison is there to support this effort, provide additional information for packets when needed, and to help facilitate discussion during meetings. Staff, Chair, and Liaison shall work to keep all “in the loop” by copying on email and making all other efforts to keep all informed.

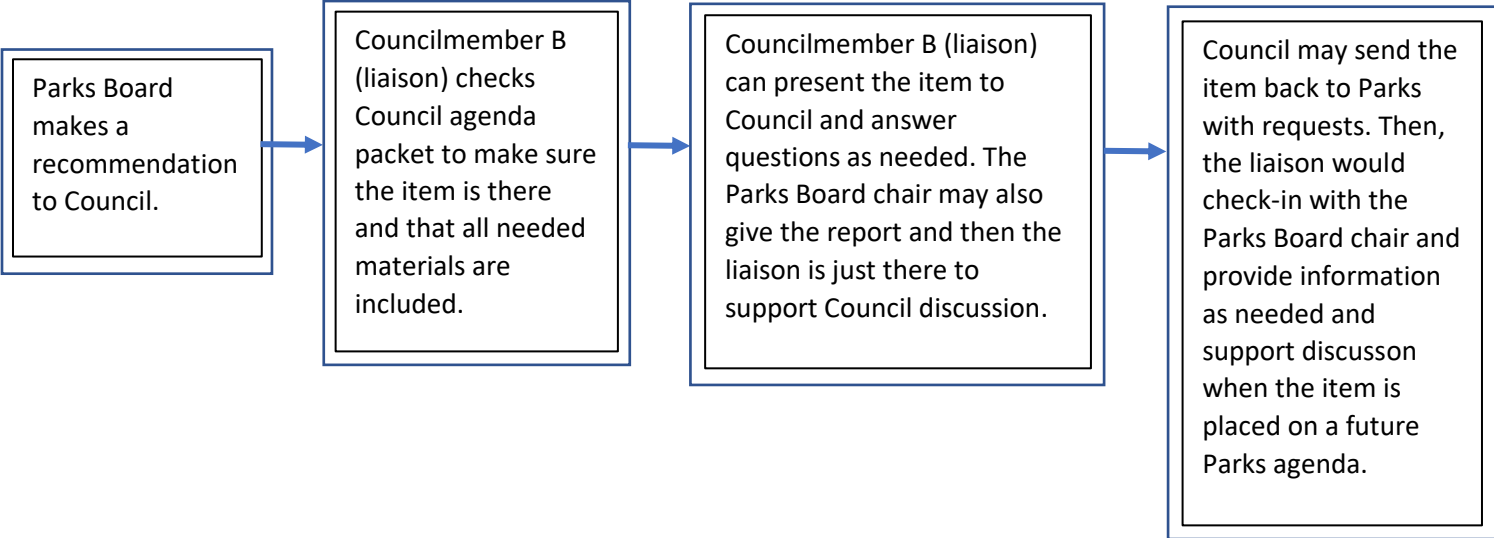
EXAMPLE OF THIS COMMUNICATION FLOW:

Item 2.

Council to Board



Board to Council



CHAPTER 110: HOTEL-MOTEL OCCUPANCY TAX

§ 110.01 TAX LEVIED.

Effective 7-1-2013, there is hereby levied, enacted and approved a zero percent hotel-motel occupancy tax within the incorporated municipal boundaries (i.e., City limits) of the City and its extraterritorial jurisdiction (ETJ). (Ord. 13-178, 4-10-2013)

§ 110.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Consideration. The cost of the room in a hotel only if the room is ordinarily used for sleeping, and not including the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

Grant. A transfer of moneys from the Hotel-Motel Tax Account to designated recipients following formal request procedures.

Hotel. Any building or buildings in which members of the public may, for a consideration, obtain sleeping accommodations, including hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, bed and breakfast or other buildings where rooms are furnished for a consideration. The term does not include hospitals, sanitariums, nursing homes or dormitories or housing facilities owned or leased and operated by an institution of higher education or a private or independent institution of higher education, as defined by the State Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution.

Occupancy. The use or possession, or the right to the use or possession of any room or rooms in a hotel if the room is one which is ordinarily used for sleeping and if the occupant is other than a permanent resident, as hereinafter defined.

Occupant. Anyone who, for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under any lease, concession, permit, right of access, license, contract or agreement, other than a permanent resident, as hereinafter defined.

Permanent Resident. Any occupant who has or shall have the right to occupancy of any room or rooms in a hotel for at least 30 consecutive days during the calendar year or preceding year.

Person. Any individual, partnership, company, corporation or association owning, operating, managing or controlling any hotel.

(Ord. 13-178, 4-10-2013)

§ 110.03 TAX AMOUNT AND EXCEPTIONS.

- (A) Effective 7-1-2013, there is hereby levied a tax of zero percent of the price paid for a room in a hotel on every person who, under a lease, concession, permit, right of access, license, contract or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2.00 or

more each day and is ordinarily used for sleeping. The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person, except those services related to the cleaning and readying of the room for possession.

(B) Exemptions are as follows.

- (1) No tax shall be imposed upon a permanent resident.
- (2) No tax shall be imposed for federal or state employees traveling on official business.
- (3) No tax shall be imposed for diplomatic personnel who present a tax exemption card issued by the U.S. Department of State.
- (4) No tax shall be imposed for federal or state military personnel traveling on official military business. This exemption does not cover military staff on leave or between stations.

(Ord. 13-178, 4-10-2013; Ord. 13-188, 12-18-2013)

§ 110.04 COLLECTION OF TAX.

Every person owning, operating, managing or controlling any hotel shall collect the tax levied by this chapter for the City. The failure of the person, firm or corporation owning, operating, managing or controlling said hotel to collect sufficient moneys from occupants to satisfy said tax shall not excuse the obligation to pay said tax to the City. Any person who receives or collects hotel tax from an occupant shall hold the amount so collected in trust for the benefit of the City and is liable to the City for the full amount collected, plus any accrued penalties and interest on the amount collected.

(Ord. 13-178, 4-10-2013; Ord. 13-188, 12-18-2013)

Cross reference(s)—Penalty, see § 110.99

§ 110.05 MONTHLY REPORT TO CITY MANAGER/ADMINISTRATOR.

- (A) On the 20th day of the month following each last day of the month, every person required to collect the tax imposed hereby shall file a report with the City Manager/Administrator showing the price paid for all room occupancies in the preceding month, the amount of the tax collected on such occupancies and any other information the City Council may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing such report.
- (B) Every person required to collect the tax imposed hereby and file a report with the City Manager/Administrator are hereby granted the option to report local hotel-motel tax on a quarterly basis. Such quarterly reports of the local hotel-motel tax shall be reported and paid at the same time the state hotel-motel tax is paid.
- (C) The report shall be in a form prescribed by the City Council and shall contain a copy of the state report filed for the comparable period.
- (D) The City Manager/Administrator and Mayor are hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this chapter.
- (E) The City Manager/Administrator shall have the authority to request and receive, within a reasonable time, documentation for information contained in the report to the City by the hotel.

(Ord. 13-178, 4-10-2013)

§ 110.06 REGULATIONS RELATING TO ACCESS TO BOOKS AND RECORDS.

The City Council shall have the power to make such rules and regulations as are reasonable and necessary to effectively collect the tax levied hereby and shall, upon reasonable notice, have access to books and records necessary to enable it to determine the correctness of any report filed as required by this chapter and the amount of taxes due under the provisions of this chapter.

(Ord. 13-178, 4-10-2013)

§ 110.07 USE OF TAX REVENUE.

- (A) The Hotel-Motel Tax Revenue Advisory Committee is hereby established, membership of which shall consist of no more than two sitting Council members, no more than two representatives of local hotels, motels and bed and breakfasts, and the City Treasurer, to make recommendations to the City Council for expenditures approved by state law.
- (B) The revenue derived from any hotel occupancy tax imposed and levied by this chapter may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following:
- (1) The acquisition of sites for and the construction, improvement, enlarging, equipment, repairing, operation and maintenance of convention center facilities (as such is defined in the Tex. Tax Code § 351.001);
 - (2) The furnishing of facilities, personnel and materials for the registration of convention delegates or registrants;
 - (3) Advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;
 - (4) The encouragement, promotion, improvement and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution and exhibition of these major art forms; and
 - (5) Historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:
 - (a) Which are at or in the immediate vicinity of convention center facilities; or
 - (b) Which are located elsewhere in the municipality or its vicinity that would be frequented by tourists, convention delegates or other visitors to the municipality.
- (C) (1) Revenue derived from the hotel occupancy tax shall be expended only in a manner which directly enhances and promotes tourism and the convention and hotel industry as hereinbefore delineated.
- (2) Such revenue shall not be used for the general revenue purposes or general governmental operations of the municipality which are not directly related to promoting the hotel and convention industry or tourism in the municipality.

(Ord. 13-178, 4-10-2013)

§ 110.08 ADMINISTRATIVE REQUIREMENTS.

- (A) The City Council may, by contract, delegate to a person, including another governmental entity or a private organization, the management or supervision of programs and activities funded with revenue from the hotel occupancy tax.
- (B) The City Manager/Administrator must maintain the revenue provided by the municipality from the tax in a separate account established for that purpose and may not commingle that revenue with any other money or maintain it in any other account.
- (C) (1) The municipality may not delegate to any person or entity the management or supervision of its convention and visitors programs and activities funded with revenue from the hotel occupancy tax other than by contract as provided herein.
 - (2) The approval by the City Council of the annual budget of the person or entity to which these functions may be delegated creates a fiduciary duty in the person or entity with respect to the revenue provided by the municipality to the person or entity under the contract.
- (D) The City Manager/Administrator shall maintain complete and accurate financial records of each expenditure of hotel occupancy tax revenue made under the direction of the person or entity contracted, if any, and on request of the City Council shall make the records available for inspection and review.
- (E) Hotel occupancy tax revenue may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly in the promotion and servicing of expenditures hereinbefore authorized. The portion of the total administrative costs for activities for which hotel occupancy tax revenue may be used may not exceed the administrative costs actually incurred in conducting the authorized activities.
- (F) Hotel occupancy tax revenue may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of the person's job in an efficient and professional manner.

(Ord. 13-178, 4-10-2013)

§ 110.09 EFFECTIVE DATE.

The hotel occupancy tax authorized herein shall become effective on 7-1-2013 and shall, thereafter, be collected on all rooms under occupancy (as that term is herein defined) from and after the effective date, regardless of the date upon which payment or reservation for the occupancy was made.

(Ord. 13-178, 4-10-2013)

§ 110.10 CONFLICTING PROVISIONS.

This chapter, upon its enactment and effective date, shall repeal all conflicting provisions that may be contained in other City ordinances or regulations, except to the extent they apply to obligations and violations arising prior to the enactment of this chapter.

(Ord. 13-178, 4-10-2013)

§ 110.11 SEVERABILITY.

In the event that any one or more of the provisions, clauses or words of this chapter or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provisions, clauses or words of this chapter or the application thereof to any other situations or circumstance and it is intended that this chapter shall be severable and that it shall be construed and applied as if such invalid or unconstitutional clause, section, provision or word had not been included herein.

(Ord. 13-178, 4-10-2013)

§ 110.99 PENALTY.

(A) *Enforcement.*

(1) *Offenses.*

- (a) It shall be unlawful for any person to fail to file a report with the City Manager/Administrator in accordance with this chapter.
- (b) It shall be unlawful for any person to fail to render payment to the City Manager/Administrator of taxes levied by this chapter.

(2) *Administrative penalties.*

- (a) Any person committing one or more of the following shall be charged an administrative penalty:
 1. Failure to file a report as required by this chapter;
 2. Filing a false report; or
 3. Failure to pay to the City Manager/Administrator the tax as imposed herein when said report payment is due.
 - (b) Any person committing the above acts shall pay an amount equal to 5% of the amount due as penalty.
 - (c) After the first 30 days, the person shall be charged an amount equal to an additional five percent of such tax (total 10 percent), and after the second 30 days the person shall be charged an amount equal to an additional five percent of such tax (total 15 percent). However, such penalty shall never be less than \$1.00.
- (3) *Criminal fines.* Any person violating any of the provisions of this chapter, including hotel operators who fail to collect the tax, fail to file a return, file a false return or who are delinquent in their tax payment, shall be guilty of a Class C misdemeanor and shall, upon conviction, be fined in any sum not to exceed \$500.00. Each 24 hours of any such violation shall constitute a separate offense.

(B) *Additional penalties.*

- (1) In addition to the amount of any tax owed under this chapter and state law, the person is liable to the City for the municipality's reasonable attorney's fees.
- (2) The City is hereby authorized to take the following actions against any person required to collect the tax imposed hereby and pay the collection over to the City and who has failed to file a report, filed a false report or failed to pay the tax when due:

-
- (a) Require the forfeiture of any revenue the City allowed the hotel operator to retain for its cost of collecting the tax;
 - (b) Bring suit against the hotel for non-compliance;
 - (c) Ask the District Court to enjoin operation of the hotel until the report is filed and the tax is paid; and/or
 - (d) Bring suit against the hotel seeking any other remedies provided under state law.
- (C) *Additional authorization to bring suit.* The City is hereby authorized to bring suit against any person required to collect the tax imposed hereby and required to pay the collection over to the City and who has failed to file a report, filed a false report or failed to pay the tax when due. Such suit may seek to collect such tax not paid or to enjoin such person from operating a hotel in the City until the tax is paid or the report is filed or both, as applicable and as provided in the injunction.

(Ord. 13-178, 4-10-2013)


Economy

FiscalNotes

[comptroller.texas.gov/economy/fiscalnotes]

Current Issue [comptroller.texas.gov/economy/fiscal-notes/docs/fn.pdf]

Translation:

Powered by  **Translate**

The Hotel Occupancy Tax A Short History of a Complex Levy

by Gerard MacCrossan and Joyce Jauer

Published June 2016

When booking lodging in Texas, you're often spoiled for choice — lots of beds at lots of different prices. But however much you spend, you're also contributing to the state and local governments by paying combined hotel occupancy taxes of anywhere from 6 to 17.5 percent, depending on where you stay.



Photo courtesy of Galveston Island Convention and Visitor's Bureau

The state's HOT tax, as it's often called, has been around since 1959, when the Texas Legislature enacted a 3 percent hotel occupancy tax. Two rate hikes by lawmakers in the 1980s brought it to the present

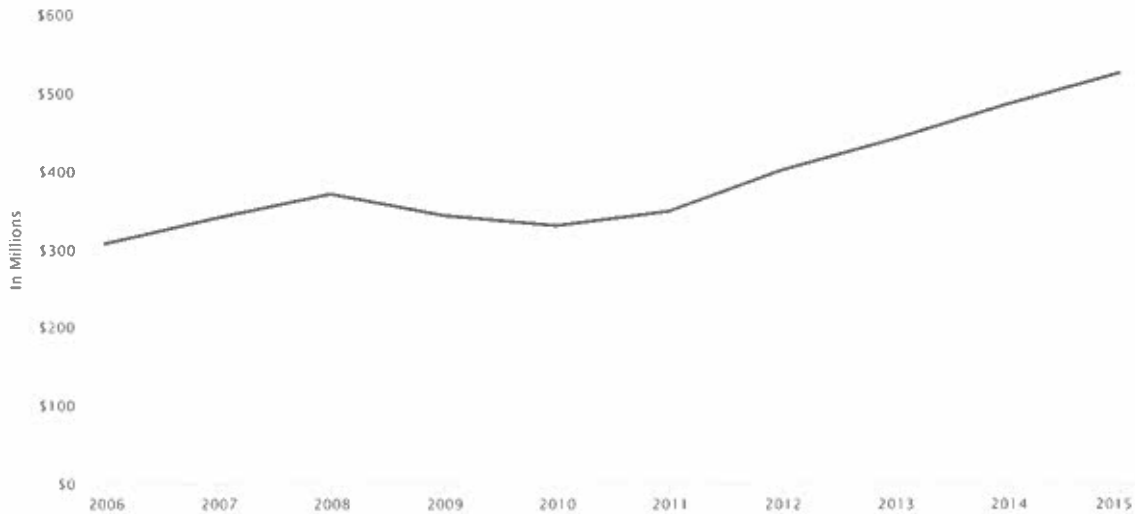
state rate of 6 percent.

In fiscal 2015, the state collected almost \$526 million in state hotel occupancy taxes (**Exhibit 1**). The state’s General Revenue Fund receives nearly 92 percent of this revenue, with the remainder allocated to a state Economic Development Account that supports the tourism advertising and marketing activities of the Texas Governor’s Economic Development and Tourism office.

EXHIBIT 1: TEXAS STATE HOTEL OCCUPANCY TAX COLLECTIONS, FISCAL 2006 - 2015

Roll over the chart for specific values.

[View Data.](#)



Source: Texas Comptroller of Public Accounts

In the early 1970s, the Legislature authorized municipalities to collect the first local hotel occupancy taxes in Texas. In 1981, the Legislature began permitting some counties to levy their own HOT taxes; legislation in the intervening years has increased the number of eligible counties to about 70.

And in 1997, the Legislature offered hotel occupancy taxing authority as one of several revenue options to support sports and community venues, to be levied by a city, county or a partnership between the two. Houston and Harris County, for example, created the Harris County – Houston Sports Authority in 1997 to support the Houston Astros baseball stadium, now called Minute Maid Park. Today, Texas cities and some counties may establish up to a 2 percent hotel occupancy tax to support a venue, if approved by public referendum.

Over the years, the Legislature has authorized the return of a portion of the state HOT tax collected in six communities – Corpus Christi, Galveston, Port Aransas, Quintana, South Padre Island and Surfside Beach – to clean and maintain public beaches and shorelines within those municipalities.

In addition, various amendments to state law have permitted temporary state tax rebates to fund convention centers and related hotel facilities. The most recent was in 2015, when the Legislature amended the law to allow state tax rebates to six cities — El Paso, Frisco, Nacogdoches, Odessa, Round Rock and Tyler — to repay bond debt for a hotel project built within 1,000 feet of a convention facility. Ten cities were already eligible for these rebates.

Item 4.

The 2015 rebates weren't passed without controversy. During a boisterous debate in the 2015 legislative session, opponents criticized the Legislature's selective action in permitting HOT tax rebates for some cities but not others. Lawmakers on both sides of the issue proposed granting the rebate to many more cities — including some that weren't even *considering* developing a hotel convention center — to ensure their home areas weren't left out. The additional rebates didn't pass, however, and the legislators opposing them made their disapproval loud and clear.

Local HOT Uses

Under Texas law, local HOT revenue can be used only to directly promote tourism and the convention/hotel industry. This means the proceeds should be spent on projects or events that result in visitors or attendees staying overnight in the community, generating more hotel occupancy tax. The Texas Municipal League describes this as the first part of a two-part test it calls the hotel tax "two-step."

Provided the first test of directly promoting tourism and hotel activity is met, the expenditure then must fit into one of the categories authorized by statute. According to the Comptroller's Data Analysis & Transparency Division, these categories include:

- the construction, maintenance and operation of a convention or visitor center;
- facilities and personnel for the registration of convention delegates;
- advertising and promotional programs to attract tourists;
- encouragement and promotion of the arts;
- historical restoration and preservation projects;
- advertising to encourage tourists to visit historic sites and museums;
- signage directing the public to sights and attractions frequently visited by tourists;
- certain transportation systems serving tourists and hotel guests;
- and, for certain cities,
- sporting events for which the majority of participants come from out of town;
- qualifying sports facilities that routinely host regional or national tournaments; and
- coliseums or multiuse facilities.

What You Pay When You Stay

Determining the amount you pay in hotel occupancy tax is simple for locations with state HOT tax only — with few exceptions, a room costing at least \$15 per night is subject to a 6 percent state tax anywhere in Texas. (Local hotel taxes are levied on room nights costing at least \$2.) The state and any applicable

local tax is due on stays of no more than 30 consecutive days, unless the stay qualifies for another of hotel tax exemption, such as that given to federal employees on official business.

Item 4.

The Legislature has authorized local HOT levies in piecemeal fashion, however, often through complex descriptions applying only to specific communities. Taxes may be due to the state and as many as three separate local jurisdictions collecting under the authority of different Tax Code and Local Government Code statutes.

In spring 2016, for instance, the authors priced a \$188 room for a single midweek night in downtown Austin, a few blocks from the state Capitol. Hotel occupancy taxes of about \$28 were tacked onto the bill, including 6 percent to the state, 7 percent to the city of Austin and another 2 percent supporting the Austin Convention Center.

Maximum HOT Rates

Texas law for county hotel tax rates (Texas Tax Code 352) has been amended 29 times. Current law sets the cap for county HOTs at between 0.75 percent and 9 percent, depending on factors such as the county's population, the population of cities within its borders and geographical features such as proximity to Mexico, the Gulf of Mexico, the Neches River or a national park.

The statute governing the maximum city hotel tax rate (Texas Tax Code 351) has been amended 11 times, and currently caps the tax at 7 percent, 8.5 percent or 9 percent, depending on factors such as the city's population and its proximity to the Gulf of Mexico, the state of Louisiana, Lake Palestine or a coastal barrier island.

The maximum tax rate for cities and counties levying a tax for sports and community venues (Texas Local Government Code 334 and 335) is 2 percent (or 3 percent for Dallas County only).

In 2013, the Legislature established a maximum cap of 17 percent for all state and local HOT taxes. El Paso's local taxes, however, were put in place before the Legislature established the combined cap; its city and venue taxes total 9 percent combined, on top of a 2.5 percent county tax and the 6 percent state tax, for a total of 17.5 percent.

Comptroller's Local HOT Survey

Unfortunately, again due to the piecemeal implementation of hotel occupancy taxes across Texas, there is no comprehensive list of local rates, or even of jurisdictions levying the tax. In fact, not every county is permitted by law to levy the tax. To determine the local rate at any location, the most practical course may be to check with the establishment where you plan to stay.

At present, it appears that about a third of eligible Texas cities, counties and special-purpose districts levy and collect local HOT taxes. To learn more, in early 2016 the Comptroller's office surveyed a number of Texas local governments on their use of hotel taxes. (See the survey results in detail [comptroller.texas.gov/taxes/hotel/].)

Of 1,314 cities and 254 counties in Texas, 358 cities and 57 counties responded to the Comptroller survey (27.2 percent and 22.4 percent, respectively).

Among the survey participants, 61 percent of cities and 28 percent of counties levy a hotel occupancy tax. In their most recent fiscal year, survey respondents reported these entities collected a combined \$135.9 million. Many of the largest cities and counties did not submit data for the survey, however, so it's fair to assume that local HOT taxes bring in significantly more. Item 4.

Of the 358 Texas cities responding to the Comptroller survey, 217 levy hotel tax (**Exhibit 2**) and collected \$126.3 million in their most recent fiscal year. Most of the responding cities (84 percent) collect the maximum allowable tax rate of 7 percent or, in three cases, 9 percent.

Just 16 of 57 counties responding to the survey levy the hotel tax, collecting \$9.7 million in their most recent fiscal year (**Exhibit 3**). In many cases, the 17 percent cap placed on combined HOT levies prevents counties from collecting the maximum statutory tax rate because of overlapping boundaries with cities. Half of the responding counties levying the tax collect 2 percent.

EXHIBIT 2: COMPTROLLER SURVEY - TEXAS MUNICIPAL HOTEL OCCUPANCY TAXATION

Tax Rate	Number of Responding Cities
9%	3
8%	0
7%	183
6%	10
5%	7
4%	11
3%	2
2%	1
1%	0
No tax	141

Note: 358 cities responded to the survey.

Source: Texas Comptroller of Public Accounts

EXHIBIT 3: COMPTROLLER SURVEY - TEXAS COUNTY HOTEL OCCUPANCY TAXATION

Item 4.

Tax Rate	Number of Responding Counties
9%	1
8%	0
7%	3
6%	0
5%	0
4%	3
3%	0
2.5%	1
2%	8
1%	0
No tax	41

Note: 57 counties responded to the survey.

Source: Texas Comptroller of Public Accounts

Other findings include:

- among survey respondents, 39 percent of HOT revenue is allocated to advertising and promotion; 3 percent for historical preservation; 5 percent for arts and heritage purposes; and 21 percent for other purposes, including the operation of visitor centers and event facilities.
- four entities responding to the survey — Brazos County and the cities of Arlington, El Paso and McAllen — collect both a city or county HOT tax and a separate HOT tax for sports and community venues.
- more than half of survey respondents that collect the tax — 124 cities and eight counties — collect between \$10,000 and \$500,000 annually from hotel taxes; the median for all respondents was \$104,256.

Local Taxes for Local Needs

The complexity of hotel occupancy taxation reflects its development over time to suit specific community needs. That's why the hotel tax on your bill for a weekend trip to Padre Island, a college football game in El Paso or a rodeo in Bandera can be vastly different.

Local governments levying the 9 percent tax rate — the highest available by law — mostly use it to support more than one venue or project, or to maintain public land on the Gulf of Mexico. Four jurisdictions participating in the survey collect the tax at 9 percent:

- the city of *Fort Worth* collects a 9 percent HOT tax. Seven percent is used for operations including the Fort Worth Convention Center, the Fort Worth Convention and Visitors Bureau and the Will

Rogers Memorial Center, while an additional 2 percent levied since 1997 is used to support de
service on bonds used to expand and improve the convention center.

Item 4.

- the city of *Groesbeck* adopted a 9 percent tax in 2009, which includes a 2 percent venue tax for a civic center.
- in 2003, the city of *Jamaica Beach* on Galveston Island increased its 7 percent hotel occupancy tax to 9 percent, and expanded a narrower 1998 ordinance to allow all uses of the funds permitted under state law, including beach tourism, construction and operation of a community pool and a potential project to build a recreation center.
- *Willacy County*, which includes a section of Padre Island, collects 9 percent to cover the cost of beach maintenance; the rate was increased by 1 percent every two years from an initial 4 percent levy in 2005.

Around the State

Brazos County collects a 2 percent venue tax for its Brazos Valley Fair and Exposition complex, and in 2013 introduced an additional 0.75 percent tax to contribute to the renovation of Texas A&M University's Kyle Field. Although these rates are relatively low, Brazos County had the second-highest HOT revenue among the Comptroller's survey respondents (\$2.6 million in fiscal 2015) after El Paso County (\$3.6 million), probably due to the high number of visitors to Texas A&M.

The city of *El Paso* collects the municipal hotel occupancy tax at 7 percent to support an auditorium and convention center, and in 2012 introduced an additional 2 percent levy via a venue district hotel tax for a multipurpose sports stadium. Combined city HOT taxes totaled \$13.1 million in fiscal 2015.

Reeves County has a particularly complex history with venue-related HOT levies. In 2005, Reeves County and the city of Pecos formed a special district to levy the tax. Legislation approved in 2011 led to the dissolution of this district and the transfer of its revenues to a new county-controlled fund to collect a 2 percent venue tax. These funds may be used for the community center and rodeo, purposes cited in the election language that created the special district. Broader uses intended for the venue tax, such as advertising and promotion of the arts and heritage, are supported by Pecos' 7 percent city HOT tax.

HOT Revenue in the Oil Bust

Many communities whose economies were buoyed by high oil prices just a few years ago have seen a marked decline in HOT revenue, as lower oil prices spur producers and service companies to cut back on staffing and related spending. Once-bustling hotels in the oil patch now have empty rooms and are cutting prices to compete for what trade is left.

In the Eagle Ford Shale region, for example, the city of Kenedy has seen its HOT revenue plummet from \$257,000 in the first quarter of fiscal 2014 to less than \$123,000 in the same quarter of 2016. Such steep declines are commonplace across South Texas oilfield cities and counties.

It's a similar story in the Permian Basin. For example, Brownfield's local HOT revenues have been declining steadily since oil prices began falling in summer 2014. Collections exceeded \$65,000 in the third quarter of 2014, but fell to just \$31,000 in the first quarter of 2016.

What's Next for Local Hotel Taxation?

Item 4.

If history is a guide, the 2017 Legislature probably will see bills filed on behalf of communities seeking authority to levy a hotel tax, or to expand their spending authority to convention facilities or hotels to serve them.

One thing that's *unlikely* to happen is a streamlined, one-size-fits-all approach to clean up the complex HOT statutes. That might take a session in itself. **FN**

Find out more about [Texas state and local hotel occupancy tax statutes](https://comptroller.texas.gov/taxes/hotel/) [comptroller.texas.gov/taxes/hotel/].

HOTEL ROOM REVENUE					
Revenue Description	Taxable Yes or No	Tax Type	Additional Comments	Authority	
1. Transient Rooms Revenue	Yes	Hotel Occupancy	The state hotel occupancy tax rate is 6%. Cities and authorized counties and special purpose districts may impose additional local hotel taxes that are administered and collected by the local taxing authorities.	Tex. Tax Code §156.052	
2. Room Cancellation Fee	Yes*	Hotel Occupancy	Hotel tax is due when the full room rate is paid and cancellation is within 30 days of the scheduled stay. *Fees paid that are less than the room rate are not taxable, such as a percentage or sliding scale.	Tex. Tax Code §156.051(a); Comptroller's Decision Nos. 24,654 and 40,676 (STAR Accession Nos. 8906H0952A07 and 200201878H)	
3. Complimentary Rooms Provided at No Charge:					
a. Guests	No		Hotel tax is not due if hotel receives no consideration for the room.		
b. Employees	No		Hotel tax is not due if hotel receives no consideration for the room. An internal reimbursement or internal payment within a company for the use of a room is not taxable (e.g., a hotel company makes an internal transfer to a specific hotel in which the hotel company's employee stayed while inspecting the hotel).	Tex. Tax Code §156.051(a)	
c. Travel Agents, Advertisers, etc.	No*		Hotel tax is not due if the hotel receives no consideration for the room. *Any barter or trade for a room is taxable.	Tex. Tax Code §§151.005 and 156.051(a)	
4. Early Departure Fee	No		Early departure fees are not taxable, unless equal to the room rate (see Room Cancellation Fee).	Tex. Tax Code §156.051(a)	
5. Late Departure Fee	No		Late departure fees are not taxable, unless equal to the room rate (see Room Cancellation Fee).	Tex. Tax Code §156.051(a)	
6. Room Attrition Fee (Fee charged because group did not fulfill their total event commitment. For example, an event blocked 200 rooms, but only 150 rooms were rented and occupied and the event was charged a penalty for 50 rooms not rented.)	Yes*	Hotel Occupancy	Room attrition fees are taxable only if by paying the fee a person has paid the consideration necessary to achieve the right to use or possess the room. In the example given, the group is charged the full price of rooms not rented and, therefore, the fee is taxable. *An attrition fee that is based on a percentage or sliding scale is not taxable (see Room Cancellation Fee).	Tex. Tax Code §156.051(a); Comptroller's Decision Nos. 24,654 and 40,676 (STAR Accession Nos. 8906H0952A07 and 200201878H)	

Item 4.

Room Revenue

This publication is intended as a general guide and not as a comprehensive resource on the subjects covered. It is not a substitute for legal advice.

Quick Reference Guide for Hotels
Texas Comptroller of Public Accounts

7. Packages (e.g., golf, honeymoon, and ski packages)	Yes	Sales, Hotel Occupancy, or Mixed Beverage	When the bill to the customer is lump sum, the entire amount is subject to hotel tax; when the bill separately states the room charge from the other package items, the room charge is subject to hotel tax. The other separately listed package items may be subject to different taxes, such as sales or mixed beverage taxes.	34 Tex. Admin. Code §§3.162 and 3.293
8. Rooms for resale sold to:				
a. Tour operators	Yes*	Hotel Occupancy	Texas hotel tax laws do not have a resale provision. Hotels should collect tax on the price paid for a room by persons who resell hotel rooms and by agents who obtain hotel rooms on behalf of customers. The tax responsibilities of persons who obtain rooms for other persons is determined by their specific actions relating to control of a hotel room.	Tex. Tax Code §156.051
b. Meeting planners	Yes*	Hotel Occupancy		
c. Online travel companies and others who resell rooms	Yes*	Hotel Occupancy		
* This issue is currently being litigated.				
9. Banquet/Meeting Room Revenue (No Meals Served)	Yes*	Hotel Occupancy	When the banquet or meeting room is located inside the hotel (building with sleeping rooms), the hotel must collect the 6% state hotel tax, unless an exemption applies. Local hotel taxes are only imposed on sleeping rooms. <i>*When the banquet or meeting room is located in a building separate from the hotel, the hotel shall not collect hotel tax.</i>	Tex. Tax Code §§156.051(a), 351.002(a), and 352.002(a); 34 Tex. Admin. Code §§3.162 and 3.293
10. Banquet/Meeting Room Revenue (Meals Served)				
a. Room located inside hotel (building with sleeping rooms) - Separated billing	Yes	Hotel Occupancy and Sales	Collect sales tax on the charge for food; collect the 6% state hotel tax (not local) on the charge for the banquet/meeting room.	Tex. Tax Code §§151.314(c-2) and 156.051; 34 Tex. Admin. Code §3.162
b. Room located inside hotel (building with sleeping rooms) - Lump sum billing	Yes	Hotel Occupancy	Collect the 6% state hotel tax (not local) on the lump-sum charge.	Tex. Tax Code §156.051; 34 Tex. Admin. Code §§3.162 and 3.293

This publication is intended as a general guide and not as a comprehensive resource on the subjects covered. It is not a substitute for legal advice.

<p>c. Room located in a building separate from the hotel - Separated or lump sum billing</p>	<p>Yes</p>	<p>Sales</p>	<p>Collect sales tax on the entire charge, even when the banquet/meeting room and food charges are separately stated. The hotel is a caterer of meals and collects tax on the total price for preparing or serving the meals, including separately stated expenses. A charge for the facility is an expense connected with the sale of the meal.</p>	<p>Tex. Tax Code §§151.005(6) and 151.314(c-2); 34 Tex. Admin. Code Section §3.293</p>
<p>11. Child Care Expenses</p>	<p>No</p>		<p>Hotel tax is not due on separately stated charges for personal services, except those related to cleaning and readying a room for occupancy. A child care service is a personal service and not taxable.</p>	<p>Tex. Tax Code §156.051; 34 Tex. Admin. Code §3.162</p>
<p>12. Pet Fees</p>	<p>Yes</p>	<p>Hotel Occupancy</p>		
<p>13. Rollaway Bed Charges</p>	<p>Yes</p>	<p>Hotel Occupancy</p>	<p>Hotel tax is due on all charges for items or services, other than personal services or the use of a telephone, furnished in connection with the actual occupancy of the a room, including a charge for a pet, rollaway bed, refrigerator, or safe.</p>	<p>Tex. Tax Code §156.051; 34 Tex. Admin. Code Section §3.162</p>
<p>14. Refrigerator Charges</p>	<p>Yes</p>	<p>Hotel Occupancy</p>		
<p>15. Safe Charges</p>	<p>Yes</p>	<p>Hotel Occupancy</p>		
<p>16. Reward points redemption programs: Hotel pays a predetermined amount to a rewards fund each time a member of the reward points program stays at the hotel; each time a member redeems points for a free room or upgrade, the rewards fund pays the hotel a predetermined amount.</p>	<p>No</p>		<p>Check with the local taxing authorities to determine local hotel tax policies regarding reward points redemption programs. State hotel tax is not be due on reimbursements from reward points redemption programs if hotel records show that the amount the hotel receives from the rewards fund is money previously paid to the fund by the hotel, excluding any administrative charges. Any amount received that exceeds the amount previously paid into the rewards fund, excluding administrative charges, is taxable.</p>	<p>Tex. Tax Code §156.051(a)</p>

HOTEL ROOM REVENUE EXEMPTIONS					
Description	Tax Exempt?	Time Period	Documentation Required	Additional Comments	Authority
Non-Transient:					
1. Can a guest be considered non-transient?	Yes	30 consecutive days	Records showing room rental of 30 or more consecutive days, OR written agreement or notice of intent to stay for at least 30 consecutive days and proof a room was rented for the next 30 consecutive days	Texas law provides a permanent resident exemption for persons who have the right to occupy a room for 30 or more consecutive days. To qualify, non-transients (permanent residents) may either occupy a room for 30 or more consecutive days (pay tax on first 30 days, but exempt thereafter); OR enter into written agreement with the hotel or give the hotel written notice of intent to stay at least 30 consecutive days and have right to occupy room for the next 30 consecutive days (exempt beginning date of notice or agreement). Any interruption in occupancy voids the exemption. Checking a guest out and immediately back in is NOT an interruption of the guest's right to occupy a room.	Tex. Tax Code §156.101; 34 Tex. Admin. Code §3.161
2. Can Corporations, Partnerships, and LLCs qualify as non-transient?	Yes	30 consecutive days	Records showing room rental of 30 or more consecutive days, OR written agreement or notice of intent to stay for at least 30 consecutive days and proof a room was rented for the next 30 consecutive days	The hotel must invoice and be paid by the same person (corporation, partnership, LLC, etc.); the exemption is not dependent on the same natural person occupying the room or that the same room be rented each night.	Tex. Bus. & Com. Code §1.201(b)(27); 34 Tex. Admin. Code §3.161; and STAR Accession No. 6003A0156E03
3. Can Airline Crew Rooms qualify as-non transient?	Yes	30 consecutive days	Contract showing rental of room(s) for more than 30 consecutive days	The exemption applies to the number of rooms specified in the contract and rented for at least 30 consecutive days. For a range of rooms, the exemption only applies to the lowest number of rooms in the range plus any additional rooms rented at least 30 consecutive days. Different crew members may occupy different rooms; however, the same number of rooms must be rented for at least 30 consecutive days to be exempt.	34 Tex. Admin. Code §3.161
4. Is a written contract required for non-transient status?	No	Not Applicable	Records showing room rental of 30 or more consecutive days, OR written agreement or notice of intent to stay for at least 30 consecutive days and proof a room was rented for the next 30 consecutive days	If there is no written agreement or notice, a guest can become exempt on the 31st consecutive day of occupancy and will remain exempt until there is an interruption in occupancy; however, tax is due on the first 30 days and the guest is not entitled to a refund.	34 Tex. Admin. Code §3.161
5. After guests have met non-transient requirements...					
a. Can taxes be refunded from the first date of stay?	Yes*	30 consecutive days	Written notice of intent to stay for at least 30 consecutive days with record showing room rented for 30 or more consecutive days	Hotel may refund tax back to date hotel received written notice of intent to stay for 30 or more days <i>*otherwise, the first 30 days are taxable</i>	34 Tex. Admin. Code §3.161

This publication is intended as a general guide and not as a comprehensive resource on the subjects covered. It is not a substitute for legal advice.

Hotel Room Revenue Exemption

b. Is a hotel required to collect taxes from Day One if a written contract exists?	No	30 consecutive days	Copy of contract or notice for stay of 30 or more consecutive days	Even with contract/written notice, the hotel can be held liable for hotel tax if the guest fails to pay for 30 consecutive days. The hotel may wish to collect tax for first 30 days, then refund or credit the tax.	Tex. Tax Code §§156.053; 34 Tex. Admin. Code §3.161
Federal, State, Local Government:					
6. Federal government employees qualify for exemption if:					
a. Payment made directly by agency?	Yes	Not Applicable	Completed Hotel Occupancy Tax Exemption Certificate (Form 12-302) and proof of direct payment by agency	Federal government agencies are exempt from state and local hotel tax. Examples of direct payment include an agency purchase order, agency credit card, agency debit card, agency check, or direct billing. Any person may physically occupy the room.	Tex. Tax Code §156.103(a); 34 Tex. Admin. Code §3.161
b. Payment made by agency employee who is reimbursed by agency?	Yes	Not Applicable	Completed Hotel Occupancy Tax Exemption Certificate (Form 12-302); to accept certificate in good faith, a valid government ID must be presented	Employees traveling on official business are exempt from state and local hotel taxes; manner of payment does not affect the exemption.	Tex. Tax Code §§156.103(a) and 156.104(a); 34 Tex. Admin. Code §3.161
7. State government employees qualify for exemption if:					
a. Payment made directly by agency?	No	Not Applicable	Texas state agencies do not claim exemption with the hotel	Texas state agencies can apply with the Comptroller for a rebate of hotel taxes paid to hotels or reimbursed to employees. See 7.c. for exemption for designated state officials and employees.	Tex. Tax Code §§156.103(b) and 156.154; 34 Tex. Admin. Code §3.163
b. Payment made by employee who is reimbursed by agency?	No	Not Applicable	Most Texas state employees cannot claim exemption with the hotel	Most Texas state employees must pay hotel tax. A state employee whose agency uses the Texas Uniform Statewide Accounting System (USAS) is automatically reimbursed through the employee's travel voucher for hotel taxes paid by the employee. A state agency that does not use the USAS must request a refund directly from the Comptroller and local taxing jurisdictions for state and local hotel taxes.	Tex. Tax Code §§156.103(d) and 156.104(a); 34 Tex. Admin. Code §3.161
c. Employee is a designated Texas state official?	Yes	Not Applicable	Completed Hotel Occupancy Tax Exemption Certificate (Form 12-302) and designated Texas state official's Hotel Occupancy Tax Exemption Photo ID or Card	Designated Texas officials - mostly heads of state agencies, district attorneys, district and appellate court judges, members of state boards and commissions, and the Texas Legislature - are exempt from state and local hotel tax.	Tex. Tax Code, Chapter 156, Subchapter C-- Exceptions to Tax
8. Other states' government employees	No	Not Applicable	Not exempt	Agencies from other states and their employees are not exempt.	Tex. Tax Code, Chapter 156, Subchapter C-- Exceptions to Tax
9. Local government employees	No	Not Applicable	Not exempt	Local government agencies and their employees are not exempt.	Tex. Tax Code, Chapter 156, Subchapter C-- Exceptions to Tax

10. Foreign Missions and Diplomats	Yes	Not Applicable	Tax Exemption Card issued by the U.S. Department of State and a completed Hotel Occupancy Tax Exemption Certificate (Form 12-302)	Foreign missions and diplomats that have received a hotel tax exemption from the Office of Foreign Missions, U.S. Department of State, are exempt from state and local hotel tax.	34 Tex. Admin. Code §§3.161
Other:					
11. Non-profit organizations - 501(c)(3) Organizations	No	Not Applicable	Not exempt	501(c)(3) organizations are not exempt.	Tex. Tax Code, Chapter 156, Subchapter C-- Exceptions to Tax
12. Religious and Charitable Organizations	Yes	Not Applicable	Completed Hotel Occupancy Tax Exemption Certificate (Form 12-302); to accept exemption certificate in good faith, copy of Comptroller's letter of exemption or name on Comptroller's list of exempt entities is required	Exempt from 6% state hotel tax only; any local hotel tax imposed must be paid. Employees traveling on official business are also exempt. The method of payment by the employee is immaterial; however, non-employees must pay with exempt organization funds (check, credit card, or direct billing).	Tex. Tax Code §§156.102, 156.104(a), 351.006, and 352.007; 34 Tex. Admin. Code §§3.161
13. Public Schools (elementary and secondary):					
a. In-state	Yes	Not Applicable	Completed Hotel Occupancy Tax Exemption Certificate (Form 12-302); to accept exemption certificate in good faith, copy of Comptroller's letter of exemption or name on Comptroller's list of exempt entities is required.	In-state and out-of-state public schools are considered educational organizations for hotel tax purposes and are exempt from 6% state hotel tax; any local hotel tax imposed must be paid.	Tex. Tax Code §§156.102(a), 156.104(a), 351.006, and 352.007; 34 Tex. Admin. Code §§3.161
b. Out-of-state	Yes	Not Applicable	Completed Hotel Occupancy Tax Exemption Certificate (Form 12-302); a Comptroller's letter of exemption as an educational organization is not required, but the organization may have one.	In-state and out-of-state public schools are considered educational organizations for hotel tax purposes and are exempt from 6% state hotel tax; any local hotel tax imposed must be paid.	Tex. Tax Code §§156.102(a), 156.104(a), 351.006, and 352.007; 34 Tex. Admin. Code §§3.161
14. Nonprofit Private Schools (elementary and secondary):					
a. In-state	Yes*	Not Applicable	Completed Hotel Occupancy Tax Exemption Certificate (Form 12-302); to accept exemption certificate in good faith, copy of Comptroller's letter of exemption or name on Comptroller's list of exempt entities is required.	In-state and out-of-state nonprofit private elementary and secondary schools are considered educational organizations for hotel tax purposes and are exempt from 6% state hotel tax; any local hotel tax imposed must be paid. <i>*For-profit private elementary and secondary schools are not exempt.</i>	Tex. Tax Code §§156.102(a), 156.104(a), 351.006, and 352.007; 34 Tex. Admin. Code §§3.161
b. Out-of-state	Yes*	Not Applicable	Completed Hotel Occupancy Tax Exemption Certificate (Form 12-302); to accept exemption certificate in good faith, copy of Comptroller's letter of exemption or name on Comptroller's list of exempt entities is required.	In-state and out-of-state nonprofit private elementary and secondary schools are considered educational organizations for hotel tax purposes and are exempt from 6% state hotel tax; any local hotel tax imposed must be paid. <i>*For-profit private elementary and secondary schools are not exempt.</i>	Tex. Tax Code §§156.102(a), 156.104(a), 351.006, and 352.007; 34 Tex. Admin. Code §§3.161

Item 4.

15. Public and Nonprofit Private Universities and Colleges (institutions of higher education):					
a. In-state	Yes	Not Applicable	Completed Hotel Occupancy Tax Exemption Certificate (Form 12-302); to accept exemption certificate in good faith, copy of Comptroller's letter of exemption or name on Comptroller's list of exempt entities is required.	In-state public and nonprofit private universities and colleges are considered educational organizations for hotel tax purposes and are exempt from 6% state hotel tax; any local hotel tax imposed must be paid.	Tex. Tax Code §§156.102(a), 156.104(a), 351.006, and 352.007; 34 Tex. Admin. Code §3.161
b. Out-of-state	No	Not Applicable	Not exempt	Out-of-state public and nonprofit private universities and colleges do not qualify as educational organizations for hotel tax purposes and are not exempt from hotel tax.	Tex. Tax Code §156.102(b)(2)
16. Scientific Organizations	No	Not Applicable	Not exempt	Scientific organizations are not exempt from hotel tax.	Tex. Tax Code Chapter 156, Subchapter C--Exceptions to Tax

Texas Tax-Exempt Entity Search: Charitable, educational, religious, and nonprofit organizations that have been issued a letter of tax exemption are listed on the Comptroller's website at: comptroller.texas.gov/taxinfo/exempt/exempt_search

Taxes

Hotel Occupancy Tax FAQs

▼ Where is the monthly and quarterly hotel receipts data previously found on the Comptroller's Hotel Data Search page?

The Hotel Data Search page was removed from the Comptroller website in accordance with Senate Bill 1086 , passed during the 85th legislative session. This bill prohibits state agencies from posting hotel receipts information from a business on a public website. Users are still permitted to request the data by submitting an open records request [comptroller.texas.gov/about/policies/open-records/].

▼ Who has to collect hotel taxes?

A hotel's owner, operator or manager must collect hotel taxes from their guests. For the purposes of the *state* tax, a hotel is considered to be any building in which members of the public rent sleeping accommodations for \$15 or more per day. *Local* hotel taxes apply to sleeping rooms costing \$2 or more per day.

The tax covers hotels, motels, and bed and breakfasts, as well as condominiums, apartments and houses rented for less than 30 consecutive days. Hotel tax does not apply to hospitals, sanitariums, nursing homes, student dormitories operated by colleges and universities, or condominiums, apartments and houses leased for more than 30 consecutive days.

▼ What is the hotel tax rate?

The state hotel tax rate is 6 percent.

Cities and some counties and special purpose districts can each levy local hotel taxes, generally at rates varying up to 7 percent; sports and community venue projects can levy hotel taxes at rates varying up to 2 percent, except for Dallas County which can impose a hotel venue tax at a rate of up to 3 percent.

For example, in Houston there is 6 percent state tax, 7 percent Houston tax, 2 percent Harris County tax and 2 percent Harris County - Houston Sports Authority tax.

▼ What government agency handles hotel taxes?

The Comptroller's office collects and administers the 6 percent state hotel tax, while cities and counties are responsible for collecting their own local hotel taxes.

▼ Can I use a hotel's existing taxpayer number if I buy a hotel?

Item 4.

There are various factors that affect the answer to this question, so please call our Hotel Occupancy tax help line toll-free at 800-252-1385 to discuss your situation with a tax specialist.

▼ How do I apply for a hotel tax permit?

While the Comptroller's office does not issue printed hotel tax permits, businesses that report the tax should send a completed Form AP-102, Hotel Occupancy Tax Questionnaire [comptroller.texas.gov/forms/ap-102.pdf] to the Comptroller's local field office [comptroller.texas.gov/about/contact/locations.php].

Owners and operators should contact the county and city where their hotel is located for more information about collecting and reporting local hotel taxes.

▼ Is there hotel tax on meeting or banquet rooms?

The 6 percent state hotel tax applies to any room or space in a hotel, including meeting and banquet rooms. Local hotel taxes, however, are due only on those rooms ordinarily used for sleeping.

There are no state or local hotel taxes on meeting and banquet rooms located in a building where no sleeping accommodations are provided.

▼ Who is exempt from paying state and local hotel taxes?

- The U.S. government and its employees traveling on official business.
- Foreign diplomats issued a tax exemption card by the U.S. Department of State, unless the card specifically excludes hotel tax.
- Certain Texas state officials with special hotel tax exemption cards (includes heads of state agencies, members of state boards and commissions, judicial officials at the district court level and above, state legislators and legislative employees).
- Permanent residents who occupy a room for at least 30 consecutive days. Any interruption in the term of occupancy will void the exemption.
 - Guests who stay 30 or more days and notify the hotel in writing of their intention beforehand are exempt from the day of notification.
 - Guests who do not notify the hotel must pay the tax the first 30 days and are exempt thereafter.
- Some nonprofit entities and their employees traveling on official business.
 - The entity must have received a hotel tax exemption letter from the Comptroller's office.
 - The reason for the exemption must be written on the exemption certificate. For example, "exempt per Electric Cooperative Act, Utilities Code, Chapter 161" or "exempt per Telephone Cooperative Act, Utilities Code, Chapter 162."

▼ Who is exempt from paying only the state hotel tax?

Religious, charitable and educational organizations that have received a letter of exemption from Comptroller's office are exempt from the 6 percent state hotel tax. The exemption extends to their employees traveling on official business, but does not apply to any local hotel taxes, which must be paid.

Item 4.

- Exempt religious organizations [comptroller.texas.gov/taxes/exempt/index.php#other-label] include nonprofit churches and their guiding or governing bodies, but do not include missionary organizations, Bible study groups or churches made up only of family members.
- Charitable organizations [comptroller.texas.gov/taxes/exempt/index.php#other-label] include nonprofit organizations whose sole purpose is to provide food, clothing, drugs, treatment or shelter directly to indigent and needy persons. Not included are 501(c)(3) not-for-profit corporations, social groups, professional or business groups, fraternal organizations, or similar organizations.
- Educational organizations [comptroller.texas.gov/taxes/exempt/index.php#school-label] include independent school districts, public and private elementary and secondary schools, and Texas institutions of higher education (public and private colleges, universities, junior colleges, and community colleges). Not included are research organizations, home schools and organizations that mainly provide support services to schools. Effective October 1, 2003, non-Texas institutions of higher education no longer qualify for exemption.

▼ How can my organization apply for a hotel tax exemption?

To apply for exemption, qualifying religious, charitable and educational organizations must complete and submit the appropriate application and supporting documentation. If an organization qualifies for the exemption, the Comptroller's office will send instructions on how to get an exemption verification letter. For additional information on exemptions, please refer to *Hotel Occupancy Tax Exemptions* [comptroller.texas.gov/taxes/publications/96-224.php].

▼ Why do some hotels collect tax after a permanent resident gives written notice?

A hotel is liable for tax if a guest fails to stay for 30 consecutive days. In this case, a hotel may prefer to collect tax and then later give the guest a refund or credit.

▼ Does an exempt organization have to pay the hotel directly or can the guest pay?

The payment method of an exempt organization's employee does not affect the exemption. Non-employees of an exempt organization, however, must pay the hotel with the organization's funds (organization check, credit card or direct billing).

▼ Are third-party contractors working for the federal government exempt?

No, third-party contractors completing contracts for the government or using federal grant money are not exempt and must pay state and local hotel taxes.

▼ Are Texas state agencies and their employees exempt from hotel taxes?

No, state agencies (except Texas institutions of higher education) and their employees (except state officials described above) must pay state and local hotel taxes. State employees traveling on official state business can request a reimbursement of the state and local hotel taxes on their travel vouchers.

▼ Are local government agencies and their employees exempt from hotel taxes?

No, county and city agencies and their employees must pay state and local hotel taxes, and cannot request refunds of taxes paid.

▼ How does a hotel guest claim an exemption?

An exempt organization or its employee must give the hotel a completed Form 12-302, Texas Hotel Occupancy Tax Exemption Certificate [comptroller.texas.gov/forms/12-302.pdf], and proof that the organization has received a letter of hotel tax exemption from the Comptroller's office at the time of registration. Organizations that have received hotel tax exemption can be found by using the Comptroller's Tax-Exempt Entity Search [comptroller.texas.gov/taxes/exempt/search.php].

▼ What do hotels need to verify an exemption?

Hotels can accept exemption certificates in good faith when the guest provides 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 the holder is exempt from hotel taxes;
- foreign diplomats - a tax exemption card issued by the U.S. Department of State that exempts the diplomat or mission, 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 Tax-Exempt Entity Search [comptroller.texas.gov/taxes/exempt/search.php] showing the organization is exempt for hotel tax.

▼ Do entities have to report their hotel occupancy tax information?

Yes, starting in 2018 municipalities must report their local HOT information to the Comptroller every year. The reporting period opens on Jan. 1st and closes Feb 20th. Please review the Municipal Hotel Occupancy Tax Reporting webpage [comptroller.texas.gov/transparency/local/hotel-receipts/] for more information.

Need Additional Help?

- Read *Hotel Occupancy Tax Exemptions* [comptroller.texas.gov/taxes/publications/96-224.php]
- Use our Tax-Exempt Entity Search [comptroller.texas.gov/taxes/exempt/search.php]

- Call a hotel tax specialist toll-free at 800-252-1385

Item 4.

 **Taxes****Hotel Occupancy Tax FAQs**

Airbnb

As of May 1, 2017, Airbnb began collecting and remitting the 6 percent state hotel occupancy tax on Texas short-term rentals booked through the Airbnb website.

The following are frequently asked questions from Airbnb Hosts and the answers:

▼ When did Airbnb begin collecting and remitting Texas state hotel occupancy tax?

On May 1, 2017, Airbnb began collecting and remitting Texas state hotel occupancy taxes on behalf of all hosts for all bookings on the Airbnb website from that date forward. Hosts will no longer be responsible for collecting such taxes on Airbnb rentals and will not have an option to opt-out of collection by Airbnb.

▼ Do Hosts need to report Airbnb rental receipts or taxes collected to the Comptroller after May 1, 2017?

Hosts should not report any of their Airbnb rental receipts to the Comptroller on the Texas Hotel Occupancy Tax Report (form 12-100), either in Item 4 "Total Dollar Amount of Receipts" or Item 5 "Total Taxable Receipts" for any Airbnb bookings made on or after May 1, 2017. Airbnb will report rental receipts and remit state hotel occupancy taxes to the Comptroller for its Hosts' rentals.

▼ Are Hosts responsible for state hotel occupancy taxes collected on Airbnb rentals prior to May 1, 2017?

Yes. Hosts are responsible for collecting state hotel occupancy taxes and remitting to the Comptroller. Any bookings Hosts have through Airbnb prior to May 1, 2017, must be reported to the Comptroller.

▼ Are Hosts responsible for state hotel occupancy taxes on bookings/reservations made prior to May 1, 2017, for stays that occur after that date?

Yes. Hosts are responsible for state hotel occupancy taxes on bookings/reservations made prior to May 1, 2017, regardless of when the guest actually occupies the short-term rental.

▼ Are Hosts responsible for local hotel occupancy taxes after May 1, 2017?

Many cities and certain counties and special purpose districts impose a local hotel occupancy tax. Hosts may be responsible for local hotel occupancy taxes imposed by taxing jurisdictions where their short-term rentals are located for both Airbnb rentals and non-Airbnb rentals. If Hosts have further questions regarding local taxes, they should contact their local jurisdictions for more information.

▼ What if Hosts use non-Airbnb websites for their short-term rentals?

The collection and remittance of Texas state hotel occupancy tax is required for all short-term rentals (unless an exemption applies). Although Airbnb is handling the tax for bookings on its site, Hosts are still required to collect and remit the tax for bookings made on non-Airbnb rentals.

▼ Can Hosts who only offer short-term rentals through Airbnb close their hotel occupancy tax accounts with the Comptroller after May 1, 2017?

Yes. Hosts may close their state hotel occupancy tax account if, after May 1, 2017, they offer all of their short-term rentals through Airbnb. Hosts who do not close their accounts must file reports showing zero receipts or be subject to a \$50 non-filer penalty. Hosts may still have reporting requirements for local hotel occupancy tax on Airbnb rentals within the city, county, or special purpose district that impose a hotel occupancy tax. If Hosts have further questions regarding local taxes, they should contact their local jurisdictions for more information.

▼ Can a Host exempt guests who qualify for exemption from state hotel occupancy tax after May 1, 2017?

No. Airbnb treats all rentals of 29 days or less as taxable. If an exemption applies, Airbnb will refund the guest directly, and will maintain necessary documentation to support the exemption.

▼ What should a Host do if they are audited by the Comptroller for short-term rentals booked through Airbnb?

Hosts are not liable for state hotel occupancy taxes collected by Airbnb after May 1, 2017. Instead, Airbnb is responsible for state hotel occupancy taxes collected after May 1, 2017.

In the event of an audit, Hosts can view detailed information about their Transaction History located in their Airbnb account through Airbnb's website.

▼ Where can Hosts find information about the taxes Airbnb has remitted on their behalf?

Hosts can view detailed information about their Airbnb bookings any time in their Transaction History, located in their Airbnb account.

▼ Will Airbnb report to the Comptroller any personally identifiable information regarding the Hosts or Guests on its Texas Hotel Occupancy Tax Report?

No. Airbnb will not report any personally identifiable information regarding the Hosts or guests on Texas Hotel Occupancy Tax Report to the Comptroller. Airbnb will only be reporting total receipts and total taxable receipts for each city and county. Item 4.

▼ Can Hosts claim the 1% Timely Filing Discount on Airbnb rentals made after May 1, 2017?

No. The person required to file a Texas Hotel Occupancy Tax Report may deduct one percent of the amount of the tax due as shown on the report as reimbursement for the cost of collecting the tax. As of May 1, 2017, for Airbnb rentals, Airbnb is required to collect state hotel occupancy taxes and is required to file a Texas Hotel Occupancy Tax Report. Therefore, Hosts may not take the timely filing discount. Hosts may continue to take the timely filing discount on non-Airbnb rentals.

 **Taxes**

Hotel Occupancy Tax FAQs

HomeAway

As of April 1, 2019, HomeAway will collect and remit the 6 percent state hotel occupancy tax on Texas short-term rentals booked through HomeAway websites.

The following are commonly asked questions from HomeAway Partners, followed by the answers.

▼ When will HomeAway begin collecting and remitting Texas state hotel occupancy tax?

On April 1, 2019, HomeAway will begin collecting and remitting Texas state hotel occupancy taxes on behalf of all Partners for all bookings on HomeAway websites from that date forward. Partners will no longer be responsible for collecting such taxes on HomeAway rentals and will not have an option to opt-out of collection by HomeAway.

▼ Do Partners need to report HomeAway rental receipts or taxes collected to the Comptroller after April 1, 2019?

Partners should not report their HomeAway rental receipts to the Comptroller on the Texas Hotel Occupancy Tax Report (form 12-100), either in Item 4 "Total Dollar Amount of Receipts" or Item 5 "Total Taxable Receipts" for HomeAway rentals on or after April 1, 2019. HomeAway will report rental receipts and remit state hotel occupancy taxes to the Comptroller for its Partners' rentals.

▼ Are Partners responsible for state hotel occupancy taxes collected on HomeAway rentals prior to April 1, 2019?

Yes. Partners who collected state hotel occupancy taxes on HomeAway short-term rentals booked prior to April 1, 2019, regardless of the dates of stay, are responsible for remitting and reporting those taxes to the Comptroller. Partners are not responsible for reporting taxes on short-term rentals made through HomeAway after April 1, 2019. Partners who did not collect state hotel occupancy taxes on HomeAway short-term rentals booked prior to April 1, 2019, are responsible for collecting and remitting state hotel occupancy taxes on those rentals for any periods prior to April 1, 2019, and reporting those rentals to the Comptroller.

▼ Are Partners responsible for local hotel occupancy taxes after April 1, 2019?

Many cities and certain counties and special purpose districts impose a local hotel occupancy tax. Partners may be responsible for local hotel occupancy taxes imposed by taxing jurisdictions where their short-term rentals are located for both HomeAway rentals and non-HomeAway rentals. If Partners have further questions regarding local taxes, they should contact their local jurisdictions for more information.

Item 4.

▼ What if Partners use non-HomeAway websites for their short-term rentals?

The collection and remittance of Texas state hotel occupancy tax is required for all short-term rentals (unless an exemption applies). Although HomeAway is handling the tax for bookings on its site, Partners are still required to collect and remit the tax for bookings made on non-HomeAway rentals.

▼ Can Partners who only offer short-term rentals through HomeAway close their hotel occupancy tax accounts with the Comptroller after April 1, 2019?

Yes. Partners may close their state hotel occupancy tax account if, after April 1, 2019, they offer all of their short-term rentals through HomeAway. Partners who do not close their accounts must file reports showing zero receipts or be subject to a \$50 non-filer penalty. Partners are responsible for reporting local hotel occupancy tax on HomeAway rentals that are located in a city, county, or special purpose district that imposes a hotel occupancy tax.

▼ Can a Partner exempt travelers who qualify for exemption from state hotel occupancy tax after April 1, 2019?

No. HomeAway considers all rentals of 29 days or less to be taxable. If an additional exemption applies, HomeAway will refund the traveler directly, and will maintain necessary documentation to support the exemption.

▼ What should a Partner do if they are audited by the Comptroller for short-term rentals booked through HomeAway?

Partners are not liable for state hotel occupancy taxes collected by HomeAway after April 1, 2019. Instead, HomeAway is responsible for state hotel occupancy taxes collected after April 1, 2019.

In the event of an audit, Partners can view detailed information about their earnings any time by downloading the Payments Report located in their HomeAway account. The state hotel occupancy taxes collected are listed in the 'Stay Tax We Remit' column in the report, and the state hotel occupancy taxes also appear as a line item on all traveler receipts.

Partners can click the download icon to export the reports to a comma-separated values (CSV) file for a defined period of time, based on the Partner payout date. This is useful in the event a Partner needs to provide proof to an auditor that state hotel occupancy taxes were collected on their HomeAway bookings. If an auditor has any questions regarding the information in the CSV file, they should contact

HomeAway directly, since HomeAway is assuming the responsibility of collecting and remitting state hotel occupancy taxes on rentals booked through HomeAway.

Item 4.

When HomeAway is audited for these transactions, they will be required to prove that they collected and remitted tax on Partners' rentals.

▼ Where can Partners find information about the taxes HomeAway has remitted on their behalf?

Partners can view detailed information about their HomeAway bookings any time from HomeAway through their Payments Report, including the gross amount Partners charged the traveler for the stay, and the amount of taxes HomeAway collected and remitted. The Comptroller does not maintain information on individual Partners.

▼ Are Partners responsible for state hotel occupancy taxes on reservations made prior to April 1, 2019, for stays that will occur after that date?

Yes, Partners are responsible for state hotel occupancy taxes on bookings/reservations made prior to April 1, 2019, regardless of when the traveler actually occupies the short-term rental.

▼ Will HomeAway report any personally identifiable information regarding the Partners or Travelers on its Texas Hotel Occupancy Tax Report to the Comptroller?

No. HomeAway will not report any personally identifiable information regarding the Partners or Travelers on its Texas Hotel Occupancy Tax Report to the Comptroller. HomeAway will only be reporting total receipts and total taxable receipts for each city and county.

▼ Can Partners claim the 1 percent Timely Filing Discount on HomeAway rentals made after April 1, 2019?

No. The person required to file a Texas Hotel Occupancy Tax Report may deduct one percent of the amount of the tax due as shown on the report as reimbursement for the cost of collecting the tax. Beginning April 1, 2019, for HomeAway rentals, HomeAway is required to collect state hotel occupancy taxes and is required to file a Texas Hotel Occupancy Tax Report. Therefore, Partners may not take the timely filing discount. Partners may continue to take the timely filing discount on non-HomeAway rentals.

[<<Prev Rule](#)[Next R](#) Item 4.

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

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.

Item 4.

(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 exempt

certificate to the hotel.

Item 4.

(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, C 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.

(d) Exclusions.

Cont'd...

[Next Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#)

[TEXAS REGISTER](#)

[TEXAS ADMINISTRATIVE CODE](#)

[OPEN MEETINGS](#)

[<<Prev Rule](#)[Next R](#) Item 4.

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

Item 4.

List of Titles

Back to List

HOME

TEXAS REGISTER

TEXAS ADMINISTRATIVE CODE

OPEN MEETINGS

[<<Prev Rule](#)[Next R](#) Item 4.

Texas Administrative Code

TITLE 34

PUBLIC FINANCE

PART 1

COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3

TAX ADMINISTRATION

SUBCHAPTER K

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.

Item 4.

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

List of Titles

Back to List

HOME

TEXAS REGISTER

TEXAS ADMINISTRATIVE CODE

OPEN MEETINGS

What Cities Need to Know to Administer Municipal Hotel Occupancy Taxes

Abridged Version

Texas Hotel & Lodging Association

REVISED 2018

Table of Contents

EDITOR’S NOTE 3

AUTHORIZED ENTITIES 3

COLLECTING THE TAX 3

EXEMPTIONS FROM THE LOCAL TAX 5

PENALTIES FOR FAILURE TO REPORT OR COLLECT THE TAX 6

USE OF LOCAL HOTEL OCCUPANCY TAX REVENUES 7

Criteria #1: First, every expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry. 7

Criteria #2: Every expenditure of the hotel occupancy tax must clearly fit into one of nine statutorily provided categories for expenditure of local hotel occupancy tax revenues. 9

1) Funding the establishment, improvement, or maintenance of a convention center or visitor information center. 9

2) Paying the administrative costs for facilitating convention registration. 9

3) Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity. 10

4) Expenditures that promote the arts. 10

5) Funding historical restoration or preservation programs. 11

6) Funding certain expenses, including promotional expenses, directly related to a sporting event within counties with a population of under 1 million. 11

7) Funding the enhancement or upgrading of existing sports facilities or sports fields for certain municipalities. 12

8) Funding transportation systems for tourists 12

9) Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality. 13

ADMINISTERING HOTEL OCCUPANCY TAX REVENUE EXPENDITURES 14

Duty of funded entities to provide a list of activities. 14

Delegating management of funded activities. 14

Use of hotel occupancy tax revenues to cover administrative expenses. 15

SPECIAL RULES FOR SELECTED MUNICIPALITIES 16

ADDITIONAL INFORMATION 16

Editor’s Note

This is the abridged version of THLA’s *What Cities Need to Know to Administer Municipal Hotel Occupancy Taxes*. A full version of this article, with information including expanded information on hotel tax collection, tax exemptions, and city-specific rules, is available by contacting THLA at 512-474-2996 or emailing us at news@texaslodging.com.

Authorized Entities

All incorporated Texas municipalities, including general law and home rule cities, may enact a hotel occupancy tax within the city limits.¹ A city with a population of under 35,000 may also adopt the hotel occupancy tax within that city’s extraterritorial jurisdiction (ETJ).² Most cities are eligible to adopt a hotel occupancy tax at a rate of up to 7 percent of the price paid for the use of a hotel room.³ Additionally, a city or county may not propose a hotel occupancy tax rate that would result in a combined hotel occupancy tax rate imposed from all sources that would exceed 17 percent of the price paid for the room.⁴ If a city adopts the hotel occupancy tax within its ETJ, the combined state, county, and municipal hotel occupancy tax rate may not exceed 15 percent.⁵ Texas has among the highest combined hotel occupancy tax rates of any major metropolitan areas in the nation, with El Paso at 17 ½ percent, Houston at 17 percent, and San Antonio at 16 ¾ percent.⁶

In addition to local hotel occupancy taxes, all lodging properties operating in Texas are subject to a six percent state hotel occupancy tax.⁷ Governed under Chapter 156 of the Texas Tax Code, the state hotel occupancy tax is administered by the Texas Comptroller. Funds from the state six percent hotel occupancy tax flow directly to the Texas Comptroller’s office and are largely used for the general governmental operations of the State. A portion of the state hotel occupancy tax revenue also goes toward funding tourism promotion through Texas’s ad campaign. Most Texans know this successful ad campaign by its famous tagline, “Texas, it’s like a whole other country.”

Collecting the Tax

Under the Texas Tax Code, the following businesses are considered “hotels” and are required to collect hotel occupancy taxes from their guests: “Any building or buildings in which members of the public obtain sleeping accommodations for consideration” for less than 30 days, including a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast facilities.⁸ Additionally, a “short-term rental,” defined as the rental of all or part of a residential property to a person

¹ Tex. Tax Code Ann. § 351.002(a) (Vernon 2017).

² § 351.0025(a).

³ § 351.003(a).

⁴ Tex. Loc. Gov’t Code § 334.254(d). Note that the 17 percent cap does not apply to a city that approved a higher hotel tax through a venue ballot proposition prior to September 1, 2013, such as El Paso.

⁵ § 351.0025(b).

⁶ Source: National Business Travel Association 2009 Survey.

⁷ Tex. Tax Code § 156.051.

⁸ Tex. Tax Code § 156.001(a); 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2017).

who is not a permanent resident, is subject to hotel occupancy taxes.⁹ The Texas Administrative Code also includes “manufactured homes, skid mounted bunk houses, residency inns, condominiums, cabins, and cottages within the definition of a “hotel” if the facility is rented for periods of under 30 days.¹⁰ Hospitals, sanitariums, nursing homes, dormitories or other non-hotel housing facilities owned by institutions of higher education, and oilfield portable units do not collect the tax.¹¹ Subject to various exemptions, the hotel tax is imposed on any “person” who pays for the use of a room in a hotel, including corporations, organizations, and other legal entities. The hotel room must cost \$2 or more per day for the local hotel tax to apply, and \$15 or more per day for the state hotel tax to apply.¹²

Meeting rooms versus sleeping rooms:

The rental of sleeping rooms in hotels is subject to both state and local hotel taxes. However, there is a difference in how state and local hotel taxes apply to the rental of hotel meeting rooms. While the rental of sleeping rooms in hotels are subject to both state and local hotel taxes, meeting room rentals are not subject to local hotel occupancy taxes.¹³ The rental of a meeting room or meeting space in a hotel is subject to the state 6 percent hotel occupancy tax, provided the room or space is physically located in a structure that also contains sleeping rooms.¹⁴ For meeting rooms and banquet halls located in a structure that is physically separated from a structure that contains sleeping rooms, neither state nor local hotel occupancy taxes apply to that rental of those meeting rooms or banquet halls, provided rental costs or charges are separately stated from any lodging costs or charges on the guest’s invoice or receipt.¹⁵

However, it must be noted that sales tax may apply to the costs associated with the rental of meeting rooms or banquet halls located in a structure that is physically separated from a structure that contains sleeping rooms, if the lodging facility provides food or beverage service that is subject to sales tax.¹⁶ Such sales tax would apply to the meeting room or banquet hall rental costs or charges regardless of whether the food or beverage charges are separately stated on the guest’s invoice or receipt.¹⁷

Food and beverage and other hotel charges:

Certain charges assessed by a hotel to a guest are subject to hotel occupancy taxes, while other added charges are subject to state and local sales tax. Common hotel charges usually subject to sales taxes (but generally not subject to hotel occupancy taxes) are banquet service fees, food and beverage fees, movie rentals, dry cleaning/laundry services, internet connection, parking, and portage or bellhop fees.

Hotel charges related to occupancy of a sleeping room or readying a sleeping room for occupancy are usually subject to hotel occupancy taxes only. Common hotel charges subject to hotel occupancy tax are rollaway bed charges, pet charges, smoking fees, room damage fees, room safe charges, and late or early checkout fees.¹⁸ It is important to note that if a hotel offers services as part of a package rate included with lodging, and the price of a specific good or service is not separately stated on a guest’s invoice, bill, or folio, the entire package is subject to hotel occupancy taxes.¹⁹

⁹ Tex. Tax Code § 156.001(c).

¹⁰ Tex. Tax Code § 156.001(a); 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2017).

¹¹ Tex. Tax Code § 156.001.

¹² Tex. Tax Code § 156.051(a); § 351.002(a).

¹³ *Id.*

¹⁴ Tex. Tax Code § 156.051(a); Tex. Comptroller Opinion Letter No. 200103106L, Mar. 9, 2001.

¹⁵ *Id.*

¹⁶ 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2017); Tex. Comptroller Opinion Letter No. 201010556L, Oct, 2010.

¹⁷ *Id.*

¹⁸ THLA maintains a list of most hotel charges and which tax, if any is assessed on a particular charge. This list is available upon request to THLA members.

¹⁹ Tex. Comptroller Opinion Letter No. 200102031L, Feb. 7, 2001.

Additionally, a special rule applies to whether hotel occupancy taxes are imposed on a hotel room rental cancellation fee. A 1989 Texas Comptroller’s hearing concluded that hotel taxes are not due on charges to guests who 1) cancel more than 30 days before the scheduled stay begins, or 2) when the charge to the guest is less than the reserved room rate.²⁰ This rule applies both to individual reservations and also to group contracts.²¹

Application of local hotel tax rate increases on pre-existing contracts

If a municipality increases its hotel tax rate, the increased tax rate does not apply to a hotel room under a contract that was executed before the date the increased rate takes effect and if the contract provides for payment of the tax at the rate in effect when the contract was executed.²² This statute does not apply if the contract’s terms state that the contract is subject to change or modification from a tax rate increase.²³

Exemptions from the Local Tax

Texas law provides certain hotel tax exemptions based on the length of a guest’s stay or the guest’s affiliation with an exempt organization. Texas law is more permissive for exemptions from the state 6% hotel occupancy tax than it is for local hotel tax exemptions. The state hotel occupancy tax allows for an exemption for the following entities: educational, charitable, and religious entities are often exempt from the state hotel occupancy tax. These entities are *not exempt* from local hotel occupancy taxes.²⁴

Focusing specifically on the local hotel occupancy taxes, there are primarily four categories of exemptions permitted from municipal and county hotel occupancy taxes:

- 1) **Federal Employees:** Federal employees traveling on official business;
- 2) **Diplomats:** Foreign diplomats with a tax exempt card issued by the U.S. Department of State;
- 3) **High Ranking State Officials:** A very limited number of state officials with a hotel tax exemption card (e.g. heads of state agencies, state legislators and legislative staff, members of state boards and commissions, and state judges); and
- 4) **Permanent Resident/Over 30 Day Stay:** Persons or businesses who have agreed in advance to use a hotel room for more than 30 consecutive days (i.e. the “permanent resident” hotel tax exemption).²⁵
- 5) A full version of this article with information including expanded information on tax exemptions is available by contacting THLA.

²⁰ Texas Comptroller's Hearing Decision No. 24,654 (1989).

²¹ *Id.*

²² Tex. Tax Code § 351.007.

²³ *Id.*

²⁴ Tex. Tax Code § 156.102.

²⁵ Tex. Tax Code § 156.104.

Penalties for Failure to Report or Collect the Tax

The local hotel occupancy tax statutes provide for specific penalties a city may assess against hotel operators who fail to file the hotel tax collections report, file late or without full payment, or produce false tax returns.²⁶

A full version of this article with information including expanded information on hotel tax penalties is available by contacting THLA.

²⁶ § 351.004.

Use of Local Hotel Occupancy Tax Revenues

There is a two-part test for every expenditure of local hotel occupancy tax.²⁷

Criteria #1: First, every expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry.²⁸

Under the Tax Code, every event, program, or facility funded with hotel occupancy tax revenues must be likely to do two things: 1) directly promote tourism; and 2) directly promote the convention and hotel industry.²⁹ “Tourism” is defined under Texas law as guiding or managing individuals who are traveling to a different, city, county, state, or country.³⁰ A “direct” promotion of the convention and hotel industry has been consistently interpreted by the Texas Attorney General as a program, event, or facility likely to cause increased hotel or convention activity.³¹ This activity may result from hotel or convention guests that are already in town and choose to attend the hotel tax funded facility or arts or historical event, or it may result from individuals who come from another city or county to stay in an area lodging property at least in part to attend the hotel tax funded event or facility.

If the funded event or facility is not reasonably likely to directly enhance tourism and the hotel and convention industry, local hotel occupancy tax revenues cannot legally fund it.³² However, it is important to note that events and facilities that do not qualify for hotel occupancy tax funding are often still legally eligible for city funding from most of the other funding sources available to the city (general property tax revenues, general sales tax revenues, franchise fee revenues, etc.). State law is stricter in terms of how the local hotel occupancy tax revenues can be spent.

There is no statutory formula for determining the level of impact an event must have to satisfy the requirement to directly promote tourism and hotel and convention activity.³³ However, communities with successful tourism promotion programs generally award the amount of the hotel occupancy tax by the proportionate impact on tourism and hotel activity incident to the funding request. Entities applying for hotel occupancy tax revenue funding should indicate how they will market the event to attract tourists and hotel guests. If an entity does not adequately market its events to tourists and hotel guests, it is difficult to produce an event or facility that will effectively promote tourism and hotel activity.

A city or delegated entity should also consider whether a funded event will be held in a venue that will likely attract tourists and hotel guests. For example, if an event is held in a local school or community center, it may be less likely to attract tourists than if it is held at a local performing arts venue, museum or civic center. Each community will need to assess whether the facility hosting the function is likely to attract tourists and hotel guests. Similarly, if an event is a community picnic, local parade, educational class, or other similar type of event, it is often not likely to attract tourists and hotel guests, and would likely not be eligible for hotel occupancy tax funding.

²⁷ §§ 351.101(a), (b).

²⁸ §§ 351.101(b).

²⁹ *Id.*

³⁰ § 351.001(6).

³¹ See Op. Tex. Att’y Gen. Nos. GA-0124 (2003), JM-690 (1987).

³² *Id.*

³³ See generally Tex. Tax Code §§ 351.101(a), (b).

Finally, it is a good practice to utilize a hotel tax application form. THLA has a sample hotel occupancy tax application form and a “post event” form that are already in use by many city governments throughout Texas. For a copy of these two forms, simply call THLA at (512) 474-2996, or email THLA at news@texaslodging.com. These forms pose questions of funding applicants such as “Do you have a hotel room block for your events?,” and “What do you expect to be the number of room nights sold for this event?” Additionally, the application asks if the entity has negotiated a special hotel price for attendees of their funded event. If the entity does not find the need to reserve a hotel block or negotiate a special hotel rate, it is not likely that they anticipate their event/s will have a meaningful impact on hotel activity.

Funded entities can also visit with area hoteliers who, in many cases, can provide feedback on whether any of their hotel guests expressed an interest in attending such events or facilities in the past. Hotel front desk and management staff usually know what local events and facilities were of interest to their guests by notes in their reservation systems, requests for directions, information and transportation to such venues by hotel patrons.

After an applicant’s event or program is offered for several years, the applicant should have a reasonable idea as to whether their event or program’s attendance includes a number of tourists and hotel guests. For example, some entities track whether guests are staying at local hotels via their guest registry. Other entities measure potential out-of-town attendance from their ticket sales records or other survey information.

It is important to note that Texas law also provides that the hotel occupancy tax may not be used for general revenue purposes or general governmental operations of a municipality.³⁴ It also may not be used to pay for governmental expenses that are not directly related to increasing tourism and hotel and convention activity.³⁵ For example, consider a request to use the hotel occupancy tax to pay for construction of additional lighting, restrooms, roads, sidewalks, or landscaping in a downtown area. These are expenditures for which the city would traditionally use its general revenues. Therefore, such an expenditure would violate the prohibition against using the hotel tax for “general governmental operations of a municipality.”³⁶ It is difficult to argue that such improvements to a non-tourism facility would “directly” promote tourism and hotel activity. At best, one could argue the improvements would “indirectly” enhance tourism and hotel activity—which is not sufficient under the clear language of the Tax Code to qualify for funding from the hotel occupancy tax.

³⁴ Tex. Tax Code § 351.101(b); see also Op. Tex. Att’y Gen. Nos. JM-184 (1984), JM-965(1988).

³⁵ *Id.*

³⁶ *Id.*

Criteria #2: Every expenditure of the hotel occupancy tax must clearly fit into one of nine statutorily provided categories for expenditure of local hotel occupancy tax revenues.³⁷

The nine categories for expenditure of the hotel occupancy tax are as follows:

1) Funding the establishment, improvement, or maintenance of a convention center or visitor information center.

This category allows expenditures of the hotel tax for the creation, improvement, or upkeep of a convention center or a visitor information center.³⁸ The term “convention center” is defined to include civic centers, auditoriums, exhibition halls, and coliseums that are owned by the city or another governmental entity or that are managed in whole or in part by the city.³⁹ It also includes parking areas in the immediate vicinity of a convention center facility, and certain hotels that are owned by the city or another governmental entity, or that are managed in whole or in part by the city.⁴⁰ It does not include facilities that are not of the same general characteristics as the structures listed above.

Texas law specifies that for a facility to be funded as a convention center, it must be a facility primarily used to host conventions and meetings.⁴¹ “Primarily used” in this context would arguably mean that more than 50 percent of the bookings for the facility are to host conventions or meetings that directly promote tourism and the hotel and convention industry.⁴² In other words, holding local resident meetings in a facility would not count toward qualifying the facility as a convention center, but meetings of individuals from out-of-town who in part stay at hotels would qualify.

Simply naming a facility a convention center or visitor information center does not automatically qualify the facility as a “convention center.” The authority to use the hotel occupancy tax for facilities is limited and any such facility must meet the above noted “primary usage” test. For example, general civic buildings such as the city hall, local senior citizen centers or activity centers would not qualify as convention centers that could be funded by hotel tax.

2) Paying the administrative costs for facilitating convention registration.

This provision allows expenditures for administrative costs that are actually incurred for assisting in the registration of convention delegates or attendees.⁴³ This is generally an expenditure for larger cities that hold large conventions, and includes covering the personnel costs and costs of materials for the registration of convention delegates or attendees.

³⁷ Tex. Tax Code § 351.101(a).

³⁸ § 351.101(a)(1).

³⁹ § 351.001(2).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*; see generally Tex. Tax Code §§ 351.101(a), (b).

⁴³ Tex. Tax Code § 351.101(a)(2).

3) Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity.

This provision allows expenditures for solicitations or promotional programs/advertising directly related to attracting tourists and convention delegates to the city or its vicinity.⁴⁴ Such expenditures are traditionally in the form of internet, newspaper, mail, television, or radio ads; or solicitations to promote an event or facility. The advertising or promotion must directly promote the hotel and convention industry.⁴⁵ For example, the Texas Attorney General ruled that the local hotel occupancy tax may not be used for advertising or other economic development initiatives or improvements to attract new businesses or permanent residents to a city.⁴⁶

In certain cases, a city may be able to use the advertising and promotion category to justify covering the costs of advertising an event that will attract tourists and hotel guests, even though the administrative or facility costs for the underlying event would not qualify for hotel tax funding.⁴⁷

4) Expenditures that promote the arts.

This section authorizes the expenditure of local hotel occupancy tax for a variety of art-related programs that also promote tourism and local hotel and convention activity.⁴⁸ Specifically, it allows funding the encouragement, promotion, improvement, and application of the arts including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution and exhibition of these major art forms.⁴⁹ However, it is not enough that a facility or event promotes the arts; Texas law requires that the arts related expenditure also directly promote tourism and the hotel and convention industry.⁵⁰

Section 351.101(a) of the Tax Code specifically states that “the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry.” The Texas Attorney General reaffirmed this standard when it held in Opinion GA-0124: “Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue only to promote tourism and the convention and hotel industry, and only for the specific uses listed in the statute.”

Additionally, the amount of funding a city allocates to the arts category may be limited by statute. See the “Special Rules” section of this guide

Attorney General opinion on arts facilities

In 2017, the Texas Attorney General issued opinion number KP-0131 regarding whether a city can expend hotel tax revenues for an arts-related facility under the arts category of the Tax Code. This opinion was requested by the City of Lakeway regarding funding the construction of a new performing arts center (referred to as "PAC"), to be owned by the City. The City of Lakeway requested an Attorney General

⁴⁴ § 351.101(a)(3).

⁴⁵ § 351.101(b).

⁴⁶ Op. Tex. Att’y Gen. No. JM-690 (1987).

⁴⁷ See generally Tex. Tax Code § 351.101(a)(3).

⁴⁸ Tex. Tax Code § 351.101(a)(4).

⁴⁹ *Id.*

⁵⁰ § 351.101(b).

opinion on whether the City may legally use hotel occupancy tax revenue to pay for 1) a feasibility study for the PAC, and 2) the construction, operation, and maintenance of the PAC.

In Opinion KP-0131, the Attorney General took a strict position on using local hotel tax revenue for an arts facility. The opinion states that the phrase, "promotion of the arts," in the state statute does not expressly authorize the use of municipal hotel tax revenues for the construction of arts facilities. The opinion continues, "construction costs of theater facilities, considered alone, are not within the scope" of the arts category of hotel occupancy tax expenditures.⁵¹ Based on this reasoning, it seems that the Texas Attorney General holds that funding of a physical structure with local hotel tax revenue must be coupled with some other authorized category of hotel tax expenditures aside from "promotion of the arts" alone.

5) Funding historical restoration or preservation programs.

A city may spend a portion of its hotel occupancy tax revenues to enhance historical restoration and preservation projects or activities, or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums that are likely to attract tourists and hotel guests.⁵² Texas law does not limit such funding to structures that are owned by a public or nonprofit entity, or to whether the project is listed on a historic registry, but the city may choose to impose such limitations.

It is not enough that a project or activity event merely be historical in nature; Texas law requires that the historical related expenditure also directly promote tourism and the hotel and convention industry.⁵³ Section 351.101(a) of the Tax Code specifically states that "the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry." The Attorney General in Opinion GA-0124 (2003) reaffirmed this standard when it held: "Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue "only to promote tourism and the convention and hotel industry" and only for the specific uses listed in the statute."

Additionally, the amount of funding a city allocates to the historical programs category may be limited by statute. See the "Special Rules" section of this guide, starting on page 24.

6) Funding certain expenses, including promotional expenses, directly related to a sporting event within counties with a population of under 1 million.

This section authorizes a municipality located in a county with a population of under 1 million to use local hotel occupancy tax revenue to fund certain expenses, including promotional expenses, directly related to a sporting event.⁵⁴ To qualify under this authorization, the sporting event must be one that would "substantially increase economic activity at hotels and motels within the city or its vicinity."⁵⁵ The statutory authorization also requires that a majority of the participants in the sporting event also be tourists to the area.⁵⁶

⁵¹ Op. Tex. Att'y Gen. No. KP-0131 (2017).

⁵² § 351.101(a)(5).

⁵³ § 351.101(b).

⁵⁴ § 351.101(a)(6).

⁵⁵ *Id.*

⁵⁶ *Id.*

This category is intended to allow communities to fund the event costs for sporting tournaments that result in substantial hotel activity. For example, if a city had to pay an application fee to seek a particular sporting event or tournament, it could use hotel tax for such an expenditure if the sporting event would substantially increase economic activity at hotels and the city was within a county of under one million population. The requirement that a majority of the participants must be “tourists” is included in the statutory authority to prohibit the use of local hotel tax for sporting related facilities or events that are purely local (e.g.; local recreation centers, local little league and parks events, intramural sports, etc.).

7) Funding the enhancement or upgrading of existing sports facilities or sports fields for certain municipalities.

Certain statutorily bracketed cities may use local hotel occupancy tax to enhance and upgrade existing sports facilities owned by the municipality.⁵⁷ The municipality must own the sporting facility, and the municipality must meet applicable population requirements. A full version of this article, with information including which cities are eligible for this category, is available by contacting THLA.

Texas law further requires that before local hotel tax to be used for this purpose, the sports facilities and fields must have been used a combined total of more than 10 times for district, state, regional, or national sports tournaments in the preceding calendar year.⁵⁸

If hotel tax revenues are spent on enhancing or upgrading a sports facility, the municipality must also determine the amount of “area hotel revenue” generated by hotel activity from sports events held at the hotel tax funded facility for five years after the upgrades to the sport facility are completed.⁵⁹ The area hotel revenues that were generated from sports events at the hotel tax funded facility over that five year period must at least equal the amount of hotel tax that was spent to upgrade the sports facility.⁶⁰ If the amount of hotel tax that was spent on the facility upgrades exceeds hotel revenue attributable to events held at that facility over that five year period, the municipality must reimburse the hotel occupancy tax revenue fund any such difference from the municipality’s general fund.⁶¹

For example, if a city spent \$400,000 on improvements to its soccer fields, it would have to show at least \$400,000 in area hotel revenue directly attributable to events held at that soccer field over the five year period after the soccer field improvements were completed. If the city could only show \$300,000 in hotel industry revenue due to events held at that soccer field, the city would have to reimburse the city hotel tax with the \$100,000 difference from the city’s general fund.

8) Funding transportation systems for tourists

Often with conventions and large meetings, there is a need to transport the attendees to different tourism venues. In 2007, the Texas Legislature authorized the use of city hotel tax for any sized city to cover the costs for transporting tourists from hotels to and near the city to any of the following destinations:

⁵⁷ § 351.101(a)(7).

⁵⁸ Tex. Tax Code §§ 351.101(a)(7), 351.1076.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

- the commercial center of the city;
- a convention center in the city;
- other hotels in or near the city; and
- tourist attractions in or near the city.⁶²

The reimbursed transportation system must be owned and operated by the city, or privately owned and operated but financed in part by the city.⁶³ For example, this authority could be used to cover the costs of a city to finance certain private shuttles to operate between the convention center and area hotels and attractions for a large city-wide convention. The law specifically prohibits the use of the local hotel tax to cover the costs for a transportation system that serves the general public.⁶⁴

9) Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.

In 2009, the Texas Legislature added a statutory category that allows cities to use municipal hotel occupancy tax revenue to pay for signage directing tourists to sights and attractions frequently visited by hotel guests in the municipality.⁶⁵ Arguably, this type of expenditure was permissible as “advertising and promotion” prior to this 2009 legislation. However, the Legislature codified this understanding to officially include signage directing tourists to sights and attractions that are frequently visited by hotel guests.⁶⁶

⁶² § 351.110(a).

⁶³ § 351.110(b).

⁶⁴ § 351.110(c).

⁶⁵ § 351.101(a)(9).

⁶⁶ *Id.*

Administering Hotel Occupancy Tax Revenue Expenditures

City reporting of information to the Texas Comptroller

In 2017, the Texas Legislature passed a statute to require Texas cities to annually report hotel tax rate and spending information the State Comptroller. Specifically, the statute requires the city to report: 1) its municipal hotel tax rate, 2) any applicable venue tax rate, 3) the amount of hotel tax revenue collected for the preceding fiscal year, and 4) the amount and percentage of funds spent on each major category under state law.

The Comptroller will adopt rules to administer this new statute in the second half of 2017. These new rules will include a form for cities to complete when providing the information to the State.

Duty of funded entities to provide a list of activities.

All entities (including the city itself) that are directly or indirectly funded by the local hotel occupancy tax are annually required to provide a list of the scheduled activities, programs, or events that will directly enhance and promote tourism and the convention and hotel industry.⁶⁷ This list is to be provided annually to the city secretary or his/her designee prior to the expenditure of the hotel occupancy tax funding by the funded entity.⁶⁸ An entity may add items to this list at any time, and each city decides the format for providing this information. This documentation requirement does not apply if the entity already provides written information to the city indicating which scheduled activities or events that it offers that directly enhance and promote tourism and the convention and hotel industry. For example, cities that require quarterly or annual reports on the use of hotel tax by hotel tax funded entities would satisfy this requirement if their report addresses the extent to which their events directly promote tourism and hotel activity.⁶⁹

It is important to remember that if an entity does not have any such events or programs reasonably expected to directly promote tourism and the hotel and convention industry, it is not eligible for local hotel occupancy tax funding.⁷⁰ If only a portion of an entity's programs fit these criteria, then only a proportionate amount of that entity's costs should be covered by the local hotel occupancy tax.⁷¹

Delegating management of funded activities.

The governing body of a city may delegate the management or supervision of programs funded by the hotel occupancy tax by written contract.⁷² This delegation may be made to a person, another governmental entity, or to a private organization.⁷³ This delegation is often made to a local arts council, a chamber of commerce, or to the convention and visitors bureau. The municipality shall approve the entity's annual budget prior to delegating the management or supervision of hotel tax funded programs.⁷⁴ Furthermore, the municipality shall require the delegated entity to make periodic reports, at least

⁶⁷ § 351.108(b).

⁶⁸ *Id.*; § 351.108(d).

⁶⁹ § 351.108(g).

⁷⁰ § 351.101(b).

⁷¹ § 351.101(e).

⁷² § 351.101(c).

⁷³ *Id.*

⁷⁴ *Id.*

quarterly, listing the hotel occupancy tax expenditures made by the delegated entity.⁷⁵ Additionally, the Code requires that the contracted entity maintain complete and accurate financial records for every expenditure of hotel occupancy tax revenue, and upon the request of the municipality or another person, make the records available for inspection and review.⁷⁶

An entity with delegated authority to manage hotel tax funded programs undertakes a fiduciary duty with respect to the use of the tax revenue.⁷⁷ Such entities are also required to maintain the city hotel occupancy tax revenue in a separate bank account that may not be commingled with any other account or funds.⁷⁸ The Tax Code does not contain similar prohibitions against commingling the funds for individual organizations, such as an arts or historical group that receives hotel tax funding for their individual program, but do not themselves oversee hotel tax funding to other entities.

Use of hotel occupancy tax revenues to cover administrative expenses.

Texas law allows proceeds of the municipal hotel occupancy tax to be used to cover the portion of administrative costs that are directly attributable to work on activities that may be funded by the tax.⁷⁹ For example, entities that manage activities funded by the hotel occupancy tax may spend some of the tax for certain day-to-day operational expenses.⁸⁰ These expenses may include supplies, salaries, office rental, travel expenses, and other administrative costs.⁸¹ However, these costs may be reimbursed only if the expenses are incurred in the promotion and servicing of expenditures authorized under the hotel occupancy tax laws.⁸² The portion of the administrative costs that are covered should not exceed the percentage of the cost that is attributable to the activity funded by the hotel occupancy tax.⁸³ For example, administrators who spend 33 percent of their time overseeing hotel occupancy tax funded programs should seek funding for no more than 33 percent of their salary or 33 percent of other related overhead costs. Additionally, hotel occupancy tax revenues may be spent on travel that is directly related to the performance of the person's job in an efficient and professional manner.⁸⁴ This travel should facilitate the acquisition of skills and knowledge that will promote tourism and the convention and hotel industry.⁸⁵

⁷⁵ *Id.*

⁷⁶ § 351.101(d).

⁷⁷ § 351.101(c).

⁷⁸ *Id.*

⁷⁹ § 351.101(e).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ § 351.101(f).

⁸⁵ *Id.*

Special Rules for Selected Municipalities

The Texas Tax Code provides additional rules for certain Texas cities based on the city's population bracket. The Texas Tax Code provides additional rules for certain Texas cities based on the city's population brackets. A full version of this article with information on city-specific rules is available by contacting THLA.

Additional Information

If a city or funded entity has additional questions about the administration or use of the hotel occupancy tax, it is welcome to contact the Texas Hotel & Lodging Association for assistance by phone at (512) 474-2996 or by email at news@texaslodging.com. THLA has sample documents available to assist in administering hotel taxes, such as funding grant application forms, post event forms, and tax collection guidelines.

Texas city officials can also make inquiries to the legal staff of the Texas Municipal League at (512) 231-7400.



What is the difference between mission, vision and values statements?

Each statement may be part of the strategic planning process but have a different objective. These statements may be written for organizations or for individual departments.

A **mission statement** is a concise explanation of the organization's reason for existence. It describes the organization's purpose and its overall intention. The mission statement supports the vision and serves to communicate purpose and direction to employees, customers, vendors and other stakeholders. See SHRM's Company Mission Statement Examples (www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/missionstatementgeneral.aspx) for a variety of samples. Questions to consider when drafting mission statements could include:

- What is our organization's purpose?
- Why does our organization exist?

A **vision statement** looks forward and creates a mental image of the ideal state that the organization wishes to achieve. It is inspirational and aspirational and should challenge employees. Questions to consider when drafting vision statements might include:

- What problem are we seeking to solve?
- Where are we headed?
- If we achieved all strategic goals, what would we look like 10 years from now?

A **values statement** lists the core principles that guide and direct the organization and its culture. In a values-led organization, the values create a moral compass for the organization and its employees. It guides decision-making and establishes a standard against which actions can be assessed. These core values are an internalized framework that is shared and acted on by leadership. When drafting values statements, questions to consider might include:

- What values are unique to our organization?
- What values should guide the operations of our company?
- What conduct should our employees uphold?

In conjunction with a values statement, a **code of ethics** puts those values into practice. It outlines the procedures in place to ensure the organization's values are upheld. Questions to consider when creating codes of ethics might include:

- What are common ethical issues in our industry?
- What should someone do if he or she sees a violation of our values?

Management cannot create a new values statement or ethics code and expect immediate change. For an organization to have an effective values statement, it must fully embrace its values and ethics at all levels of the company and use them daily to guide its attitudes, actions and decision-making. Refer to What does it mean to be a values-based organization? (www.shrm.org/ResourcesAndTools/tools-and-samples/hr-qa/Pages/whatdoesitmeantobeavalues-basedorganization.aspx) for more information.

Frequently Asked Questions:

What is a mission statement?	+
What is a vision statement?	+
What is a values statement?	+
What is the difference between a mission, vision and values statement?	+
What questions should be considered when drafting a mission statement?	-
Questions to consider when drafting mission statements could include: What is our organization's purpose? Why does our organization exist?	
What questions should be considered when drafting a vision statement?	+
What questions should be considered when drafting a values statement?	+
What is a code of ethics?	+
What questions should be considered when creating a code of ethics?	+
How can an organization have an effective values statement?	+

Feedback

HR DAILY NEWSLETTER

News, trends and analysis, as well as breaking news alerts, to help HR professionals do their jobs better each business day.

CONTACT US (WWW.SHRM.ORG/ABOUT-SHRM/PAGES/CONTACT-US.ASPX) | 800.283.SHRM
(7476)

Item 5.

Monday - Friday 8:00 am–8:00 pm ET

© 2023 SHRM. All Rights Reserved

SHRM provides content as a service to its readers and members. It does not offer legal advice, and cannot guarantee the accuracy or suitability of its content for a particular purpose.

Disclaimer (www.shrm.org/about-shrm/Pages/Terms-of-Use.aspx#Disclaimer)

Feedback