



**February 14, 2003 (Reissued February 15, 2008)
Pennsylvania Sales and Use Tax
No. SUT-03-008**

Subjectability of Commonwealth to State and Local Hotel Occupancy Tax

ISSUE

Is the Pennsylvania state, the Philadelphia City and Allegheny County local, or any other local municipalities' hotel occupancy tax imposed on hotel room rentals made by taxpayer's employees when such purchases are either paid by taxpayer directly, or when taxpayer, a Commonwealth entity, reimburses the employee for the cost?

CONCLUSION

Regardless of who pays for the cost, Pennsylvania state hotel occupancy tax is imposed on hotel room rentals made by taxpayer's employees. However, taxpayer's employees are exempt from payment of the Philadelphia City, Allegheny County, and any other local municipalities' local hotel occupancy taxes.

FACTS

Taxpayer is a Commonwealth entity. Its employees rent hotel rooms while on official business. The rental cost is either paid by taxpayer directly, or taxpayer reimburses the employee for the cost if the employee pays himself.

DISCUSSION

Pursuant to the Pennsylvania Tax Reform Code of 1971, a hotel occupancy tax of six percent of the rental fee is imposed on the rent of every occupancy of a room or rooms in a hotel in this Commonwealth. 72 P.S. § 7211. Pursuant to Department regulation, employees or representatives of the Commonwealth, its instrumentalities or political subdivisions are not exempt from the state hotel occupancy tax. 61 Pa. Code § 38.2(f).

In addition, Philadelphia City, Allegheny County and other local municipalities have a corresponding one percent local hotel occupancy tax. 53 P.S. §§ 12720.501-12720.509, 16 P.S. §§ 6150-B-6157-B. However, liability for the imposition of local taxes is not one of the enumerated exceptions to the Commonwealth's sovereign immunity. 42 Pa. C.S.A. § 8522.

Therefore, pursuant to the above-referenced laws, regardless of how payment is made, taxpayer's employees are subject to the state hotel occupancy tax, but are exempt from the Philadelphia City, Allegheny County, and any other local municipalities' local hotel occupancy taxes.

In addition, the Commonwealth's Hotel Occupancy Tax does not grant a Pennsylvania county government the authority to impose a hotel room rental tax upon a Commonwealth official or employee. See 61 Pa. Code § 38a.1(d)(2).