

# PA DEPARTMENT OF REVENUE RULING ON LOCAL/COUNTY HOTEL OCCUPANCY TAX EXEMPTION

Effective January 4, 2016 – Employees who travel in Pa. on State System business MUST provide both the [PA SALES TAX EXEMPTION form](#) and the [LOCAL OCCUPANCY HOTEL TAX letter](#) to avoid being charged the LOCAL hotel occupancy tax. The letter notes that State System employees are NOT exempt from the STATE hotel occupancy tax.

Term	Yes/No
PA State Sales Tax	No
Local Sales Tax	Yes
PA State Occupancy Tax	Yes
Local Occupancy Tax	No

## Office of Chief Counsel – Occupancy Tax

Since none of the statutes enabling local jurisdictions to impose an occupancy tax contains the required express authorization to tax the Commonwealth, and PASSHE is an instrumentality of the Commonwealth, local governments lack authority to collect occupancy tax from PASSHE employees on official business. Please provide a copy of this letter to any hotel operator who questions the application of this tax, as explanation for exempting PASSHE employees.

Office of Chief Counsel  
Lora A. Kulick | [lkulick@pa.gov](mailto:lkulick@pa.gov)  
PO BOX 281061 | Harrisburg, PA 17128-1061 | Phone: 717.346.4644 | Fax: 717.772.1459 | [www.revenue.state.pa.us](http://www.revenue.state.pa.us)

Mr. Dillon  
November 25, 2015  
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As you are aware though, a state hotel occupancy tax 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 and representatives of the Commonwealth, its instrumentalities and political subdivisions, are not exempt from this state tax. 61 Pa. Code § 38.2(f).

## PA Department of Revenue

<https://www.revenue.pa.gov/TaxTypes/SUT/Pages/default.aspx>

The sales and use tax is imposed on the retail sale, consumption, rental or use of tangible personal property including - digital products - in Pennsylvania. The tax is also imposed on certain services relating to such property and on the charge for specific business services. Major items exempt from the tax include food (not ready-to-eat); candy and gum; most clothing; textbooks; computer services; pharmaceutical drugs; sales for resale; and residential heating fuels such as oil, electricity, gas, coal and firewood.

The Pennsylvania sales tax rate is 6 percent. By law, a 1 percent local tax is added to purchases made in Allegheny County, and 2 percent local tax is added to purchases made in Philadelphia.

The hotel occupancy tax, imposed at the same rate as sales tax, applies to room rental charges for periods of less than 30 days by the same person. In addition to hotels, the tax applies to rentals of rooms, apartments and houses arranged through online or third-party brokers.



# PENNSYLVANIA EXEMPTION CERTIFICATE

- STATE AND LOCAL SALES AND USE TAX
- STATE 6% AND LOCAL 1% HOTEL OCCUPANCY TAX
- PUBLIC TRANSPORTATION ASSISTANCE TAXES AND FEES (PTA)
- VEHICLE RENTAL TAX (VRT)
- ADDITIONAL LOCAL, CITY, COUNTY HOTEL TAX \*

This form cannot be used to obtain a Sales Tax Account ID, PTA Account ID or Exempt Status.

(Please Print or Type)  
**Read Instructions  
On Reverse Carefully**

**THIS FORM MAY BE PHOTOCOPIED – VOID UNLESS COMPLETE INFORMATION IS SUPPLIED**

- CHECK ONE:**     PENNSYLVANIA TAX UNIT EXEMPTION CERTIFICATE (USE FOR ONE TRANSACTION)  
                    PENNSYLVANIA TAX BLANKET EXEMPTION CERTIFICATE (USE FOR MULTIPLE TRANSACTIONS)

Name of Seller, Vendor or Lessor \_\_\_\_\_

Street	City	State	ZIP Code
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**NOTE:** Do not use this form for claiming an exemption on the registration of a vehicle. To claim an exemption from tax for a motor vehicle, trailer, semi-trailer or tractor with the PA Department of Transportation, Bureau of Motor Vehicles, use one of the following forms:

- FORM MV-1**, Application for Certificate of Title (first-time registrations)
- FORM MV-4ST**, Vehicle Sales and Use Tax Return/Application for Registration (other registrations)

Property and services purchased or leased using this certificate **are exempt** from tax because: (Select the appropriate paragraph from the back of this form, check the corresponding block below and insert information requested).

- 1. Property or services will be used directly and predominately by purchaser in performing purchaser's operation of: \_\_\_\_\_
- 2. Purchaser is a/an: instrumentality of the Commonwealth and entitled to make purchases of tangible personal property and services
- 3. Property will be resold under Account ID \_\_\_\_\_ (If purchaser does not have a PA Sales Tax Account ID, include a statement under Number 8 explaining why a number is not required).
- 4. Purchaser is a/an: \_\_\_\_\_ holding Sales Tax Exemption Number \_\_\_\_\_
- 5. Property or services will be used directly and predominately by purchaser performing a public utility service.  
      PA Public Utility Commission PUC Number \_\_\_\_\_ and/or  U.S. Department of Transportation MC/MX \_\_\_\_\_
- 6. Exempt wrapping supplies, Account ID \_\_\_\_\_ (If purchaser does not have a PA Sales Tax Account ID, include a statement under Number 8 explaining why a number is not required).
- 7. Canned computer software purchased by a financial institution subject to the Bank and Trust Company Shares Tax (Article VII) or the Mutual Thrift Institutions Tax (Article XV).
- 8. Other \_\_\_\_\_  
 (Explain in detail. Additional space on reverse side).

I am authorized to execute this certificate and claim this exemption. Misuse of this certificate by seller, lessor, buyer, lessee or their representative is punishable by fine and imprisonment.

<b>Name of Purchaser or Lessee</b> Kutztown University of Pennsylvania	Signature <i>Matthew Ansel</i>	EIN 23-2710197	Date
Street PO Box 730, 15200 Kutztown Road	City Kutztown	State PA	ZIP Code 19530

**1. ACCEPTANCE AND VALIDITY:**

For this certificate to be valid, the seller/lessor shall exercise good faith in accepting this certificate, which includes: (1) the certificate shall be completed properly; (2) the certificate shall be in the seller/lessor's possession within 60 days from the date of sale/lease; (3) the certificate does not contain information which is knowingly false; and (4) the property or service is consistent with the exemption to which the customer is entitled. For more information, refer to Exemption Certificates, Title 61 PA Code §32.2. An invalid certificate may subject the seller/lessor to the tax.

**2. REPRODUCTION OF FORM:**

This form may be reproduced but shall contain the same information as appears on this form.

**3. RETENTION:**

The seller or lessor must retain this certificate for at least four years from the date of the exempt sale to which the certificate applies.

**▲ IMPORTANT: DO NOT RETURN THIS FORM TO THE PA DEPARTMENT OF REVENUE.**

**4. NONPROFIT EXEMPT ORGANIZATIONS:**

This form may be used in conjunction with form REV-1715, Exempt Organization Declaration of Sales Tax Exemption, when a purchase of \$200 or more is made by an organization which is registered with the PA Department of Revenue as an exempt organization. These organizations are assigned an exemption number, beginning with the two digits 75 (example: 75000000).



**pennsylvania**  
DEPARTMENT OF REVENUE

RECEIVED

APR 01 2016

PASSHE  
Admin and Finance

March 23, 2016

James Dillon  
Vice Chancellor for Administration and Finance  
Pennsylvania State System of Higher Education  
2986 North Second Street  
Harrisburg, PA 17110

Re: Pennsylvania Sales and Use Tax  
Applicability of Local Hotel Occupancy Tax to Commonwealth Employees and Travelers

Dear Vice Chancellor Dillon:

The Department of Revenue, Office of Chief Counsel, is responding to the Pennsylvania State System of Higher Education's ("PASSHE") concerns that operators are imposing the local hotel occupancy tax on the rental fee paid by PASSHE employees and other individuals who travel on official PASSHE business, such as contractors and volunteers, who are not considered employees of PASSHE. For purposes of this letter, PASSHE includes the 14 state-owned universities, their branch campuses, the Office of the Chancellor, The Dixon University Center, State System at Center City Philadelphia, the Marine Science Consortium, and any other consortium or entity created as part of Pennsylvania's State System of Higher Education.

The fact that the Commonwealth is immune from local taxation is a well settled principle of law. The Supreme Court of Pennsylvania, in Lehigh-Northampton Airport Auth. v. Lehigh County Bd. of Assessment Appeals, 889 A.2d 1168, 1175 (2005), held that the power to tax is vested within the General Assembly and it alone may grant taxing authority to local governments. However, even if such taxing authority is granted, the Commonwealth's immunity from local taxation remains unaffected unless there is express statutory authorization otherwise. Id. Additionally, the Court explained that in the area of taxation, any rule requiring less than an express authorization to tax the Commonwealth could "upset the orderly processes of government by allowing the sovereign power to be burdened by being subjected to municipal taxes." Id. (referencing Commonwealth v. Dauphin County, 6 A.2d 870, 872 (1939)). Therefore, unless the enabling statute by which a local government is authorized to impose tax expressly provides for the authorization to tax the Commonwealth, such power may not be imputed. By its establishment, PASSHE is considered an instrumentality of the Commonwealth. 24 P.S. § 20-2002-A.

Since none of the statutes enabling local jurisdictions to impose an occupancy tax contains the required express authorization to tax the Commonwealth, and PASSHE is an instrumentality of

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the Commonwealth, local governments lack authority to collect occupancy tax from PASSHE employees on official business. Furthermore, "Commonwealth Travelers," pursuant to Commonwealth Management Directive 230.10 and the Commonwealth Travel Manual, who are certain other individuals traveling on official business but who are not employees, are covered by the same rules as those who are actual employees.

Please provide a copy of this letter to any hotel operator who questions the application of this tax, as explanation for exempting PASSHE employees or their non-employee representatives, traveling on official business.

As you are aware though, a state hotel occupancy tax 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 and representatives of the Commonwealth, its instrumentalities and political subdivisions, are not exempt from this state tax. 61 Pa. Code § 38.2(f).

I trust that this is a sufficient response to your concerns. Please contact me if you have any additional questions regarding this matter.

Sincerely,



Lora A. Kulick  
Senior Counsel

LAK:mec  
#62909