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Scott Joslove has served as President and CEO of the Texas Hotel & Lodging Association (THLA) for the past 17 years. In that time, THLA has grown from the fourth largest state hotel association to the largest state hotel association in the nation, with over 3,500 lodging-related member businesses from the smallest bed and breakfast properties to the largest convention center hotels.

Since joining THLA, Scott and his staff have passed every legislative bill they have offered over the last seventeen years and have defeated every legislative initiative that was opposed by the lodging industry. THLA has been recognized by the International Society of Hotel Association Executives four times for having the Best Governmental Affairs Program and the best Membership Program in the nation. THLA has also been recognized for its Educational and Communications Programs. In 2015, Scott was awarded the Anthony G. Marshall Hospitality Law Lifetime Achievement Award for his years of dedication and service to the hospitality industry. In 2016, Scott was awarded a Lifetime Achievement award from the Hotel & Lodging Association of Greater Houston.

Scott has a Masters degree in Public Administration and has been a licensed attorney for 25 years. Prior to joining THLA, Scott served as Chief of Municipal Affairs for the Texas Attorney General and as First Assistant General Counsel for the Texas Municipal League.

## **THLA Legal Q&A: The Law on Renting Rooms to Minors and Under-Age Guests**

This Q&A explains the law on renting to individuals who are under 18 or 21, and provides some best practices to avoid liability.

### **What is the legal age at which an individual may rent a hotel room?**

Texas does not have any statutory provision on renting rooms to minors. However, you should check to determine whether your hotel brand has set standards for renting rooms to minors. Hotels are legally justified to refuse to rent to minors, on the basis those individuals under 18 years of age can void a contract and, therefore, cannot not be held responsible for their actions.

Furthermore, a hotel could adopt a policy of refusing to rent rooms to individuals under 21 or even under 25 years of age, due to concerns about room damage, disturbances to other hotel guests, or underage drinking.

If a hotel decides not to rent to minors or individuals under 21 years of age, it is important that the hotel act in a manner that is consistent with the established policy. All guests must be treated the same, regardless of gender, disability, religion, race, and whether the hotel staff knows the underage guest or his or her family.

### **If a hotel does decide to rent rooms to minors, what steps can it take to protect itself against damage done to the property by the minor?**

If a hotel decides to rent rooms to minors, it would be well-advised to require an adult who is willing to be held responsible for the actions of the minor sign a contract. The responsible adult should acknowledge that he or she has the duty of control and reasonable discipline for the minor and assume liability for any property damage caused by negligent conduct or willful and malicious conduct.

For children under the age of 18, state law makes the parent liable for any damages to a hotel room in certain circumstances. Chapter 41 of the Texas Family Code establishes that a parent or guardian who has the duty of control and reasonable discipline of a child is liable for property damage caused by either negligent conduct of the child attributable to negligence of the parent, or the willful malicious conduct of a child who is at least 10 but under 18 years of age. However, it is still advisable to have an adult acknowledge this responsibility with a signed contract.

### **What steps should be taken to protect my lodging property’s interests when renting rooms to groups of minors with chaperons, such as high school basketball teams or church youth groups?**

Lodging properties should require the adult responsible for the group to sign a policy statement, agreeing to provide chaperons, outlining the responsibilities of the chaperons, setting out rules of conduct for the group, and establishing that the group will be liable for damages. THLA has sample policies that can be used.

It is important that lodging properties apply such a policy consistently. All groups must be treated the same regardless of gender, disability, religion, or race. **Visit the members section of our website, [www.texaslodging.com](http://www.texaslodging.com), for a list of items you should consider including in your lodging property’s policies on underage guests.**

**Should additional precautions be taken if providing accommodations or facilities for a prom or graduation party?**

A lodging property should consider hiring extra security personnel for these events. A property would also be well-advised to post the Texas Alcohol and Beverage Commission’s “Zero Tolerance” poster available at <http://www.tabc.state.tx.us/publications/brochures/Zero.pdf> or by contacting the TABC at (512) 206-3430. The TABC also has business cards available that a property may want to keep at its front desk with the TABC Underage Drinking Hotline number: 888.834.8222.

**What is a lodging property’s liability regarding underage drinking?**

Any activity relating to alcohol, which occurs on the hotel’s premises, with or without the hotel’s knowledge, could in certain cases impose liability on the hotel. If underage alcohol or drug use is discovered, the property should contact the TABC’s Underage Drinking Hotline, 888.843.8222. The TABC has contracted with a 24-hour answering service that ensures prompt referral to the appropriate local authorities for immediate response.

If the hotel evicts an intoxicated minor, police presence is a necessity. The last thing a hotel would want is an intoxicated minor who is evicted getting into his or her car and driving off. The police and parents can prevent that from occurring and relieve the hotelier from liability if an accident occurs.

If you have questions about renting rooms to minors or under-age guests, contact a THLA attorney at 512.474.2996.

## The Hotel Occupancy Tax Permanent Resident Exemption

There are often questions about whether the permanent resident exemption to the state and local hotel occupancy tax applies to a given situation, and at what point in time the guest becomes tax exempt. This FAQ provides hoteliers with answers to their most frequent questions on the “30-Day Exemption.”

### What is the hotel occupancy tax “permanent resident exemption?”

When the hotel occupancy tax was first adopted in 1959, the Texas Legislature recognized the need to exempt long-term guests from paying hotel occupancy taxes. This exemption ensures that hotel guests staying over 30 days are taxed the same as residents staying at extended-stay properties, apartments, corporate rental facilities, and rental houses. The Texas Legislature continues to recognize the importance of this principle, and provides for permanent resident exemptions from both state and local hotel occupancy taxes for guests, regardless of the type of accommodation the guest selects.

### Who qualifies as a “permanent resident?”

The Texas Tax Code states that any “person” who has the right to use or possess a lodging room for at least 30 consecutive days is exempt from state and local hotel occupancy taxes, provided there is no interruption in payment for the room during this period. In Texas, a “person” also includes a corporation or business. Therefore, one should look to whether the same person or corporate entity or business paid for the room for that entire period.

### When does a guest qualify for the permanent resident exemption?

If, in advance or upon check-in, the guest provides written notice of intent to occupy a guest room for 30 days or longer, no tax is due for any part of a guest’s stay. A signed registration card indicating a guest’s intent to occupy a room for 30 days or longer is sufficient evidence. A written reservation or confirmation of a reservation that indicates the stay will be more than 30 days is also sufficient notice.

### If a guest does not provide notice of intent to stay 30 days or longer, when does the guest become exempt from hotel occupancy taxes?

If no notice is provided upon check-in that can be documented by a written agreement (guest reservation, confirmation, registration, or folio or separate agreement), *the first 30 days of the guest’s stay are **not** tax-exempt*. However, the guest becomes automatically tax exempt on the 31st day of their stay—regardless of whether there was prior notice of the guest’s intent to stay for 30 days or more, as long as there has been no interruption in payment for the room.

### If a guest has a reservation for over 30 days, may the hotel choose to continue to collect hotel occupancy tax during the guest’s stay?

THLA recommends hoteliers collect hotel occupancy taxes from the guest for the first 30 days of the guest’s stay. On the 31st day of the guest’s stay, provided there is no interruption of payment for the

room and there was written notice or a reservation indicating the guest’s intent to stay 30 days or longer, the hotel should refund the collected hotel occupancy taxes for the first thirty days. This protects the hotel from incurring a tax liability should the guest check out before staying at least 30 days. An exception would be possible if the guest paid in advance for the entire 30 days and there was no allowance for a refund if the guests checks out early.

**What if the guest checks out before he or she has stayed 30 days?**

If the guest checks out prior to staying 30 consecutive days, hotel occupancy taxes are due for the guest’s entire stay, regardless of whether there was written notice or agreement that the guest would stay 30 days or longer. Again, THLA recommends hoteliers collect occupancy taxes for the first 30 days of the guest’s stay to avoid the hotel being liable for the tax should the guest check out early.

**A few days after checking in, a guest provides written notice of her intent to stay 30 days or longer.**

**When does the guest become exempt from hotel occupancy taxes?**

In this situation, the guest would not be tax exempt for the days this room was occupied prior to notifying the property of her intent to stay 30 days or more. The guest will likely become tax exempt beginning the day notification was given to the hotel, although the hotel should continue to collect hotel occupancy tax for the next 30 days. Thirty-one days after the guest notifies the hotel that the guest intends to stay 30 days or longer, the hotel should refund the collected tax from the date the guest provided notice to present.

**If the guest checks out for a day or fails to make payment on the occupied room, would this affect his/her tax exempt status?**

The Texas Tax Code requires uninterrupted payment for thirty consecutive days for an individual or company to qualify for the permanent resident exemption. If the guest fails to make payment or checks out prior to completing a 30 day stay, they would not qualify for the permanent resident exemption.

Note, however, that permanent residents are not required to physically occupy a hotel room. The guest can leave the room for extended periods of time, provided the guest is still paying for the room and the guest still has the right to occupy the room.

**Is a company eligible for a permanent resident exemption if the company rents a room for more than 30 days but houses different employees in the rented room?**

Texas statutes treat the term “person” to include more than just individuals. In this case, entities such as companies, corporations, and other organizations are treated as “persons” under Texas law. If a company pays for the rental of a hotel room the company is eligible for a permanent resident exemption, this is permissible. The company may allow different employees to occupy the room, provided the company meets the requirements of the exemption—renting the room for at least 30 consecutive days with no interruption of payment. The company renting the room qualifies for the hotel occupancy tax exemption—not the individual who is occupying the room. The right to the

exemption is not impacted by different individuals checking in and out of the room, or individuals switching which room they occupy, as long as the company paying for the room pays for an uninterrupted 30 day period.

**Where can I get more information on hotel occupancy tax exemptions?**

For more information on hotel occupancy tax exemptions, contact a THLA attorney at 512.474.2996 or via email at [news@texaslodging.com](mailto:news@texaslodging.com).

## When Guests Overstay Their Welcome: How to Handle the Guest Who Refuses to Leave

Member lodging operators frequently contact THLA with questions about what to do when *transient* guests refuse to check out as scheduled. Oftentimes, lodging operators discover that police departments will not immediately take action, stating that the situation is a civil matter. This Q & A will clear up the mystery behind this situation, and assist you in handling this problem should it arise.

If you experience this issue, your first step is to contact THLA legal staff to have them work with your staff to apply state and federal laws to your situation. Additionally, as a courtesy, we suggest that you have your staff contact other nearby lodging operators to determine if they have any room availability. You should present a list of nearby properties to the guest prior to their departure date if possible.

Additionally, the lodging property should do everything possible to avoid a problematic confrontation. Hotels should visit with their legal counsel and brand representatives on how they advise handling such situations based on your corporate brand policies and guidelines.

### Is my guest a “transient guest?”

The laws governing tenants versus the laws governing transient, or “temporary,” guests vary significantly. In general, a “transient guest” is an individual who rents property for a relatively short period of time with no intent of establishing permanent residency. Conversely, a “tenant” rents property intending to become a long-term resident and the property is his or her mailing address and “home.”

In Texas, caselaw and statutes establish that in most situations, a guest staying at a hotel is transient in nature, and not a “tenant” under Texas landlord-tenant law. However, care should be taken to determine whether the lodging property and guest have established a landlord-tenant relationship.

Some of the general definitions and differences between transient guests and tenants are:

**Lease:** *Transient guests do not enter into a lease agreement with the hotel.* Tenants enter into an oral or written lease agreement with a landlord.

**Billing format:** *Transient guests tend to be charged a daily rate for their stay.* Tenants are more likely to pay on a weekly or monthly basis.

**Stated use:** *Transient guests generally list another location as their permanent address.* Tenants use the facilities’ address for continuous contact and communication.

**Contract format:** *Transient guests generally enter into a rooming agreement via a registration card.* Tenants normally have a lease agreement or a specific contract on a separate form, in addition to their registration card.

**Existence of deposit:** *Transient guests generally do not put up a deposit. This is true even if the hotel requires a transient guest to present a credit card upon checking into the hotel.* Tenants are almost always required to give their landlord a deposit. Often this deposit is equal to a specified number of months of rent.

### I told the guest to check-out, but he or she refuses to leave. Should I call the police now?

In order for police to assist in an alleged criminal trespass, they generally require proof that the guest received personal notice they would be considered trespassers after a certain date and time.

### Do I have to notify the guest that it is time to leave?

Yes. Contact the THLA legal team at 512.474.2996 for a customized notice to give the guest. The notice informs the guest of his or her need to depart, includes reference to an attached list of contact numbers

for area lodging brands, and notes that if he or she continues to refuse to leave, it may be treated as criminal trespass. In order for police to assist in a criminal trespass, the police generally require proof the guest received personal notice the guest would be considered a trespasser after a certain date and time.

Such notice should be personally delivered and handed to the guest in his or her room by two hotel employees. If the guest refuses to open his or her room door, the notice should be slid under the door. Again, you will probably only want to use this notice when you think it is absolutely necessary.

**I gave the guest written notice that it is time to leave. Will the police help me now?**

If a guest continues to refuse to leave after the departure time in the notice, you will want to call your local police department to gain their assistance in this matter. You should request the police escort your staff to the room to ask the guest to leave once their departure time has expired, and all other efforts to assist and work with the guest have failed.

When speaking with the police, you should note that you delivered a notice of potential criminal trespass to the guest, and inform the police of any other measures you have taken to assist the guest in finding alternative lodging. You should also note the importance of police assistance to avoid a potentially difficult confrontation. If the police indicate this is a civil matter, contact THLA’s legal staff to work with your police department to understand their criminal trespass authority.

**Can I change the keycard lock code and lock the guest out?**

A hotel may change the lock code and ask a guest to leave upon their departure date. However, a lodging property should do everything possible to avoid a problematic confrontation. If you believe the guest will become difficult, please work with THLA’s legal staff regarding options in handling this situation.

**The guest is locked out, but all of his or her belongings are still in the room. What do I do with all of the guest’s personal property?**

Hotel staff may enter a room after the departure time and remove and inventory the guest’s property. Any such activity should be done with two hotel employees.

Additionally, hotels should visit with their legal counsel and brand representatives on how they advise handling such situations based on your corporate brand policies and guidelines.



**Does the law treat situations involving tenants differently from situations involving transient hotel guests?**

Very much so. Texas law gives tenants considerably more rights than transient guests. The terms of the landlord-tenant relationship are governed by both the lease agreement and by Texas statutory law. Removing a tenant is more difficult than evicting a transient guest. Evicting a tenant requires a judicial process involving a judge, while removing a transient guest can often be accomplished through criminal trespass procedures.

**How do I get a tenant to leave a room when he or she refuses to do so?**

Since tenants are given more rights than transient guests, removing a guest who is considered a tenant requires a “judicial eviction.” Contact the THLA legal team at 512.474.2996 for advice specific to your situation. The eviction process generally requires that lodging properties retain legal counsel, who must go before a judge and give a justifiable cause for the eviction.

**What is justifiable cause for eviction of a tenant?**

**Non-payment:** An eviction procedure may begin when a tenant becomes delinquent in payment. If the guest becomes current in payments, the eviction process may continue, but the court may rule against eviction if the payment is accepted.

**Exceeding the occupancy limit:** The maximum number of adults allowed in a dwelling is three times the number of bedrooms.

**Staying past the duration of the reservation:** Proceedings may begin the first day after the occupancy agreement expires.

**Violation of an occupancy agreement**

**What is the procedure to evict a tenant?**

There are several steps in the eviction procedure, all of which must be followed closely to prevent dismissal by the courts or potential litigation. The process can be done in two weeks if processed correctly.

- The hotel must provide written notice to the guest to vacate the property. If there is no written agreement, at least three days’ notice must be given.
- If the guest does not voluntarily depart, the property owner should file an eviction lawsuit in justice of the peace court.
- The local constable will then serve lawsuit papers to the tenant.
- A hearing will be held in court shortly after the copy of the lawsuit is served.
- Once the court orders eviction, the constable will conduct the eviction and peacefully remove the guest from the hotel.

## THLA's Simplified Hotel Occupancy Tax Exemption Rules

TYPE OF BUSINESS REQUESTING EXEMPTION	EXEMPT FROM STATE H.O.T.	EXEMPT FROM LOCAL H.O.T.	COMMENTS
Agricultural Development Corporations	Yes	Yes	<b>Guest must present Texas Comptroller letter of tax exemption, and</b> <b>Guest must fill out tax exemption certificate.</b>
City & County Employees	Not exempt	Not exempt	Local government employees are not exempt from hotel taxes, even when traveling on official business.
Charitable Organizations	Depends (see comments to the right)	Not exempt	<b>Guest must present Texas Comptroller letter of tax exemption, and</b> <b>Guest must fill out tax exemption certificate.</b> Charitable entities must be able to show that they devotes all or substantially all of their activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment shelter, or psychological counseling directly to indigent or similarly deserving members of society, with entity funds derived from sources other than fees or charges for its services. Other 501 (c) (3) and 501 (c) (6) entities are not exempt.
Texas Educational Organizations  (see comments on the right regarding differences between Texas and out-of-state educational organizations)	Yes	Not exempt	<b>Guest must fill out tax exemption certificate.</b> State law limits the state hotel occupancy tax exemption for higher education entities to only Texas institutions of higher education. Out-of-state higher education entities are not exempt from the state or local hotel tax. However, out-of-state educational entities that are not institutions of higher education (high schools, middle schools, elementary schools, etc.) are exempt from state hotel taxes just like their Texas counterparts.
Electric & Telephone Cooperatives	Yes	Yes	<b>Guest must present Texas Comptroller letter of tax exemption, and</b> <b>Guest must fill out tax exemption certificate.</b>
Federal Credit Unions	Yes	Yes	<b>Guest must fill out tax exemption certificate, and Present a valid ID.</b> Texas Comptroller opinion letters indicate that employees traveling on official business as employees of a federal credit union are treated as federal government employees.
Federal Employees (includes FEMA and Red Cross reimbursed rooms)	Yes	Yes	<b>Guest must fill out tax exemption certificate, and Present a valid ID.</b>
Foreign Diplomats	Yes	Yes	<b>Guest must fill out tax exemption certificate, and</b> <b>Guest must present tax exempt card issued by U.S. Department of State.</b>

<b>TYPE OF BUSINESS REQUESTING EXEMPTION</b>	<b>EXEMPT FROM STATE H.O.T.</b>	<b>EXEMPT FROM LOCAL H.O.T.</b>	<b>COMMENTS</b>
Health Facilities Development Corporations	Yes	Yes	<b>Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.</b>
Housing Authorities & Finance Corporations	Yes	Yes	<b>Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.</b>
Pan American Games Olympic Games Local Organizing Committees	Yes	Yes	<b>Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.</b>
Permanent Residents (30 days or more)	Yes	Yes	Guest must notify of their intent to stay 30 or more days from the beginning. If stay is interrupted, hotel occupancy taxes must be paid. Guests who do not notify the hotel of the anticipated over 30 day duration of their stay are exempt for hotel occupancy taxes beginning on the 31 <sup>st</sup> consecutive day of their stay.
Public Facility Corporation	Yes	Yes	<b>Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.</b>
Regional Education Service Centers	Yes	Not exempt	<b>Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.</b>
Religious Organizations	Yes	Not exempt	<b>Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.</b>
High Ranking State Officials with Hotel Tax Exemption Photo ID Card	Yes	Yes	<b>Guest must fill out tax exemption certificate, and Guest must present state photo ID card that specifically notes that employee is exempt from hotel occupancy tax.</b> These are heads of state agencies; members of state boards and commissions; state legislators and their staff; and state judges.
General State Employees without Special Hotel Tax Exemption Photo ID Card	Not exempt	Not exempt	Guest must pay the state and local hotel tax, and then have their state agency may apply for reimbursement through a separate process.

## **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.<sup>1</sup>

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).<sup>2</sup>

Hotel guests claiming items one through three of the above exemptions are required to show appropriate identification and to fill out a "Hotel Occupancy Tax Exemption Certificate" promulgated by the Texas Comptroller.<sup>3</sup> The tax exemption certificate form is available on the Texas Comptroller's website at <http://www.window.state.tx.us/taxinfo/taxforms/12-forms.html>.

### **Permanent residents (guests who stay for more than 30 days):**

Special attention should be paid to the "permanent resident" hotel tax exemption. This permanent resident exemption applies to both state and local hotel taxes, and ensures that hotel guests staying over 30 days are taxed the same as residents staying at extended-stay properties, apartments, corporate rental facilities, rental houses, etc.<sup>4</sup> The Texas Tax Code states that any "person" who has the right to use or possess a lodging room for at least 30 consecutive days is exempt from state and local hotel occupancy taxes, provided there is no interruption in payment for the room during this period.<sup>5</sup> In Texas, a "person" also includes a corporation or business. Therefore, one should look to whether the same person, corporate entity, business, or other entity paid for the room for that entire period.

If, in advance or upon check-in, the guest provides notice to a hotel of intent to occupy a guest room for 30 days or longer, no tax is due for any part of a guest's stay. A signed registration card or confirmed reservation indicating a guest's intent to occupy a room for 30 days or longer is sufficient written evidence.<sup>6</sup> Furthermore, the guest is not actually required to physically occupy the room, but the guest must maintain the right to occupy the room for the length of the exemption period.<sup>7</sup>

If no notice is provided upon check-in that can be documented by a written agreement (guest reservation, confirmation, registration, or folio or separate agreement), the first 30 days of the guest's stay are **not** tax-exempt.<sup>8</sup> However, the guest's stay becomes automatically tax exempt on the 31st day—regardless of whether there was prior notice of the guest's intent to stay for 30 days or more, as long as there has been no interruption in payment for the room.<sup>9</sup>

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<sup>1</sup> Tex. Tax Code § 156.102.

<sup>2</sup> § 156.104.

<sup>3</sup> *Id.*

<sup>4</sup> § 156.101.

<sup>5</sup> Tex. Tax Code § 156.101; 34 Tex. Admin. Code § 3.161(a)(4).

<sup>6</sup> Tex. Comptroller Opinion Letter No. 200601452L, Jan. 27, 2006.

<sup>7</sup> 34 Tex. Admin. Code § 3.161(b)(2)(C).

<sup>8</sup> § 3.161(b)(2)(A).

<sup>9</sup> *Id.*

THLA generally recommends hoteliers collect hotel occupancy taxes from the guest for the first 30 days of the guest's stay. On the 31st day of the guest's stay, provided there is no interruption of payment for the room and there was prior written notice or a reservation indicating the guest's intent to stay 30 days or longer, the hotel should refund the collected hotel occupancy taxes for the first thirty days. This protects the hotel from incurring tax liability should the guest check out before staying at least 30 days. The hotel could choose to not collect the hotel tax during the stay if the guest paid in advance for the entire 30 days and there was no allowance for a refund if the guests checks out early.

#### **State Employees:**

Virtually all rank and file state employees do not have a special hotel occupancy tax exemption card that prevents them from having to pay the state and local hotel tax even when they are on official business. Such state employees must pay the state and local hotel occupancy tax when paying their bill and, their employing agency may later apply for a refund from the state and local government tax offices.<sup>10</sup> The state agency the employee works for is responsible for requesting this refund from the state and local government.

#### **City and County Employees/Officials:**

City and county officers and employees are not exempt from the state or the local hotel occupancy tax, even if the officers or employees are traveling on official business.<sup>11</sup> Additionally, cities have no legal authority to authorize additional exemptions from the hotel occupancy tax not recognized in the Tax Code.<sup>12</sup> The Attorney General ruled in JM-865 (1988) that cities cannot grant an exception to the hotel occupancy tax for religious, charitable, or educational organizations without new constitutional or statutory authority to do so.

#### **Letters of tax exemption:**

The Texas Comptroller maintains an online database of entities that have been granted a "Letter of Tax Exemption" from the state hotel occupancy tax. Most commonly, these organizations fall into the religious or charitable categories of exemption from the state hotel occupancy tax, and the Comptroller generally requires a letter of tax exemption to accompany a completed exemption certificate before an exemption may be granted on this basis. This database is accessible online at <http://www.window.state.tx.us/taxinfo/hotel/index.html>. It is important to note that many entities are exempt from the state sales tax, but are not exempt from the state or local hotel occupancy tax.

For religious entities with a national affiliation, oftentimes the national organization's letter of tax exemption will cover individual congregations.<sup>13</sup> For example, a search of "Baptist Convention" on the online database reveals that the "NATIONAL BAPTIST CONVENTION OF AMERICA INCORPORATED" holds a letter of tax exemption that will also be valid for subordinate entities. An individual Baptist congregation affiliated with the National Baptist Convention can use the national organization's letter of tax exemption to accompany the signed exemption certificate.

Finally, the Comptroller's staff has indicated they are willing to exercise some flexibility for lodging properties that accept a tax exemption certificate in good faith from a qualifying religious entity when the entity may not yet have formally filed for a letter of tax exemption. This, however, should only be relied upon as a last resort, as there is no official report of this position, and auditors are trained to look for definitive documentation. In such a case, check the identification papers (ID, business card, etc.) for the traveler. If the entity fits into one of the exempt categories under the THLA exemption chart, honor the exemption if that entity is paying for the room. Make a copy of the identification item you are relying on, and be sure that all such travelers fill out the exemption certificate.

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<sup>10</sup> §3.163(b).

<sup>11</sup> See generally Tex. Tax Code § 351.005; Tex. Comptroller Opinion Letter No. 200202815L, Feb. 22, 2002.

<sup>12</sup> Tex. Att'y Gen. JM-865 (1988).

<sup>13</sup> Tex. Comptroller Opinion Letter No. 200109470L, Sep. 13, 2001.