

# **The 2010 Hospitality Law Conference**

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## **What Lawyers & Operators Need to Know About Hotel Operations Part I**

**Presented By:**

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## **SCOTT JOSLOVE**

Scott Joslove has served for the last ten years as President and CEO of the Texas Hotel & Lodging Association (TH&LA). In that time, TH&LA has grown from the fourth largest state hotel association to the largest hotel association in the country. TH&LA serves over 2,300 lodging related member businesses from the smallest B&B properties to the largest convention center hotels. TH&LA has been recognized three times for having the Best Governmental Affairs Program of any hotel association in the nation. TH&LA has also been recognized twice for having the best Educational Program and twice for having the best Membership Program in the nation.

Since joining TH&LA, Scott has successfully led the effort to defeat legislative initiatives that would have saddled lodging operators with additional surcharges, taxes, and burdensome regulations and has passed every legislative bill they have offered over the last ten years. .

Scott has a Masters degree in Public Administration and has been a licensed attorney for 20 years. Prior to joining TH&LA, Scott served as Chief of Municipal Affairs for the Texas Attorney General and as First Assistant General Counsel for the Texas Municipal League.



## **John Merkin**

John Merkin currently operates JKM Advisory Services in Atlanta, GA. His firm consults on branding, franchising, operations and litigation opportunities to clients in growth, repositioning or legal situations. A varied client list includes franchisees, franchisors, attorneys and retailers in the restaurant, hotel, sports management, memorabilia, education and consulting fields.

John's experience includes 28 years of multi-disciplinary positions in the services and hospitality industry. His most recent corporate position was as senior vice president, brand management, Holiday Inn Brands, for the Americas division of IHG (InterContinental Hotels Group) PLC.

John was responsible for the overall strategic direction of the Holiday Inn family of brands, which includes Holiday Inn and Holiday Inn Express, in the Americas region. He oversees the development of brand communication strategies, tactical marketing promotions, revenue management and new product development.

As a 23-year veteran at IHG, he had extensive exposure spanning brand management, franchise services, hotel operations and product development. Prior to the SVP Holiday Inn role, he was vice president, franchise operations, North America, where he was responsible for leading the quality, standards and franchise administration departments. In this position, John played a crucial role in the rejuvenation of the Holiday Inn brand and led the development of IHG's global franchise plan, using his considerable expertise in this area.

A second-generation hotelier, John began his hospitality tenure with a franchised property in 1981. He has worked extensively with the American Hotel and Lodging Association, as past co-chair of their membership committee as well as with the IAHI, the owners' association of IHG hotels. He currently serves on the executive committee of the Atlanta Area Council of the Boy Scouts of America, one of the largest councils in the country.

John earned a bachelor's degree in business management from Southern Illinois University and a master's degree in marketing and management strategy from Northwestern University's Kellogg Graduate School of Management.

# Answering Your Legal Questions: The Hotel Occupancy Tax Permanent Resident Exemption

By Justin R. Bragiel, Deputy General Counsel, Texas Hotel & Lodging Association

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 Q&A 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?**

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 TH&LA attorney at 800-856-4328 or via email at [jbragiel@texaslodging.com](mailto:jbragiel@texaslodging.com). The Texas State Comptroller also provides forms and information for hoteliers and guests alike on their website at <http://www.window.state.tx.us/taxinfo/hotel/index.html> or by phone at 800-252-1385.

TH&LA 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, TH&LA 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