

DEC 07 2015

PASSHE  
Admin and Finance

November 25, 2015

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

Dear Vice Chancellor Dillon:

The Department of Revenue, Office of Chief Counsel, is responding to the 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.

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 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.

Mr. Dillon  
November 25, 2015  
Page 2

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