



**Revenue Information Bulletin
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Sales Tax**

**Concerning When Government Employees Can Claim Sales Tax Exemption on
Hotel Lodging Charges**

La. Rev. Stat. Ann. § 47:301(14)(a) defines taxable “sales of services” to include the furnishing of sleeping rooms, cottages, or cabins to “persons” who qualify as “transient guests”. Excluded from the definition of “persons” by La. Rev. Stat. Ann. § 47:301(8)(c), for the purpose of paying the sales or use tax, including the sales tax on hotel lodging charges, are the State of Louisiana, its political subdivisions, and any agency, board, commission, or instrumentality of the state or its political subdivisions. Additionally under the Supremacy Clause, U.S. Const. Art. VI, §2, the United States Government is also exempt from the payment of the Louisiana sales or use tax.

The intention of the state statute and the federal Constitutional Supremacy clause is that a tax not be levied that would place a direct liability on a government agency. Clearly, when lodging services are purchased by and billed directly to Louisiana state or local government agency, or to an agency of the United States Government, the sales tax is not due on the charges for the lodging, because the levy of the tax would indeed create a direct liability on the government in contravention of the statute or the federal Constitution.

The department’s rule, within Section 61:I.4301 of the Louisiana Administrative Code, also recognizes a tax exemption on lodging charges contracted for by employees of an eligible government agency, but only when the tax levy would likewise place a direct liability on a government agency. Under the rule, the renting of a hotel room to an employee of the United States government, the state of Louisiana, or a political subdivision of the state of Louisiana who is traveling on official business is considered a sale of a service to the government employer regardless of the form of payment to the hotel, provided the lodging services are obtained by the employee at the direction of the employer and accounted to and reimbursed by the government agency in the actual amount expended by the employee.

Government employees who are reimbursed by their employers for the actual amount of lodging charges incurred are eligible to claim sales tax exemption on their lodging charges. Government employees who receive “per diem” allowances for their travel, or whose expense reimbursement is not otherwise dependent on the actual amount of lodging charges incurred, are not eligible to claim sales tax exemption on their lodging charges.

The sales tax exemption claimed by eligible government employees must be documented in either of the following ways:

- With a copy of the employee’s written travel orders certifying that the government employer will reimburse the actual lodging expenses incurred. The travel orders must be on government letterhead or forms and signed by an authorized representative of the government entity other than the employee engaging the hotel services. The orders must state that the employee is authorized to secure a room for a specific time period at a specific hotel or at a hotel within a defined travel area.

- If written travel orders are unavailable, or if the travel orders are incomplete or insufficient to satisfy all of the requirements in §4301.C.Person.f.ii.(a), an exemption certificate signed by the employee and the authorized agent of the governmental agency other than the employer will certify the transaction's exempt status. The hotel can accept the department's R-1376 sales tax exemption certificate entitled "Certificate of Governmental Exemption from the Payment of Hotel Lodging Taxes" or a comparable certificate used by federal agencies, provided the form states that the employee's expenses are reimbursed by the employer in the actual amount incurred.

Hotels must retain this documentation to support a sales tax deduction for room rentals to government employees on official business. Failure to do so will cause the deduction to be disallowed unless the hotels can provide competent independent evidence to certify the exemption's validity. The exemption will also be disallowed if it is determined that the documentation was obtained fraudulently or that the hotel knew the documentation was invalid when the employee presented it.

This exclusion is not allowed on hotel room charges incurred by other nations, other states and their political subdivisions, or their employees.

The United States Federal Emergency Management Agency (FEMA) on October 21, 2005 issued a memorandum from the agency's Baton Rouge office stating that FEMA travelers are not automatically entitled to "tax exempt" status for lodging when traveling on official business. The official tax exemption status for the State of Louisiana has been rescinded, the memorandum stated, and Federal employees are to pay any applicable state and local lodging taxes.

The memorandum went on to state that "Comptroller General decision 55 COMP.GEN. 1278 (B-172621), states in part '...Hotel-Motel rental tax is on the Federal employee when government reimburses its employee via per diem or actual expenses allowance. Constitutional exemption from state and local taxes does not apply when government is not itself contractually obligated to hotel-motel, even though it has voluntarily assumed economic burden thereof.'"

This FEMA memorandum means that employees of the United States Government who receive per diem expense allowances, or who are compensated for hotel expenses other than in the actual dollar amount of expenses incurred, are not entitled to provide the R-1376 sales tax exemption certificate to hotels in lieu of payment to hotels of sales taxes on lodging charges.

Questions concerning this matter can be directed to the Taxpayer Services Division at 225.219.7356.

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Secretary