



October 20, 2010
Pennsylvania Sales and Use Tax
No. SUT 10-004
Applicability of Local Hotel Occupancy Tax to State Employees

ISSUE

Are Commonwealth employees subject to hotel room rental tax ("occupancy tax") levied by local governments?

CONCLUSION

No, Commonwealth employees are not subject to occupancy tax levied by local governments under the doctrine of sovereign immunity.

FACTS

Requester asked the Office of Chief Counsel to provide a letter ruling on the applicability of occupancy tax to Commonwealth employees who travel on Commonwealth business. The request arises from a concern that hotel operators and state employees have expressed confusion regarding whether hotel rentals by these employees are subject to local occupancy tax.

DISCUSSION

The fact that the Commonwealth is immune from local taxation is a well settled principle of law. Our Supreme Court, in *Lehigh-Northampton Airport Auth. v. Lehigh County Bd. of Assessment Appeals*, 889 A.2d 1168, 1175 (2005), states 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.

Since none of the statutes enabling local jurisdictions to impose an occupancy tax contains such an express authorization to tax the Commonwealth, local governments lack authority to collect occupancy tax from Commonwealth employees while on official business.