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## Letter Ruling 02-5: Rooms Occupied by Employees of Corporations Exempt from Taxes Under Federal Law

August 26, 2002

You request a letter ruling concerning the applicability of the Massachusetts room occupancy excise, G.L. c. 64G, to stays in hotel rooms by \*\*\*\*\* (the "Corporation") and its employees. In support of your request, you state the facts as follows.

The Corporation was created in 1978 as a nonprofit public corporation by \*\*\*\*\* an Act of Congress, 42 U.S.C. § 8101 et seq. Congress, in enacting this statute, provided that:

*The Corporation, including its franchise, activities, assets, and income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.*

42 U.S.C. § 8102(d). The Corporation has also received a determination from the Internal Revenue Service that it is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code.

Furthermore, the Corporation is a participant in the GSA SmartPay System. All of the Corporation's GSA cards begin with the digits 4486 and have "O" as the sixth digit. These GSA cards are billed directly to the Corporation. The Corporation's employees utilize GSA cards for Corporation purchases for goods and for authorized travel and lodging and meals, within an authorized spending limit.

### RULING

For reasons discussed below, we conclude that the room occupancy excise does not apply to stays in hotel rooms by the Corporation and its employees.

### DISCUSSION

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Chapter 64G of the Massachusetts General Laws imposes an excise on transfers of occupancy of any room or rooms in any hotel, motel, lodging house or bed and breakfast establishment, for each occupancy, unless otherwise exempt. G.L. c. 64G, § 3. The excise is imposed on transfers of occupancy in such accommodations whenever the consideration exceeds fifteen dollars. G.L. c. 64G, § 3.

The exemptions to the room occupancy excise are found in G.L. c. 64G, § 2. Among the accommodations exempted from the excise are (a) lodging accommodations at federal, state or municipal institutions and (b) lodging accommodations at religious, charitable, educational or philanthropic institutions. Unlike the Massachusetts sales tax, G.L. c. 64H, which exempts, in pertinent part, sales to certain governmental or 501(c)(3) organizations, see G.L. c. 64H, §§ 6(d), (e), respectively, there is no specific exemption under the room occupancy excise statute for transfers of occupancy to these organizations.

In Letter Ruling 82-18 (Meals and Rooms Provided to Employees of Government Agencies or Charitable Organizations) we acknowledged that although there were no exclusions or exemptions in chapter 64G that apply to occupancy of an ordinary hotel or motel room, “[t]he United States Constitution prohibits the imposition of state taxes upon the instrumentalities by which the federal government executes its constitutional powers.” *Id.*, citing *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819). We then ruled that while the direct rental of rooms by the United States or its agencies is exempt, the occupancy of rooms by employees of the United States or its agencies, or by employees of any state, its agencies or political subdivisions, and the occupancy of rooms by employees of charitable organizations who themselves make payment for the occupancy is subject to tax, whether or not the employees are reimbursed, and whether or not they are on official business.

The Commissioner superseded Letter Ruling 82-18 in Technical Information Release (“TIR”) 01-21. There, we stated that if a federal employee or other federal government officer who is acting within the scope of his or her official duties stays in a hotel, motel or other place of public accommodation, “that occupancy is exempt from room occupancy excise under G.L. c. 64G.” The TIR provided that the Department of Revenue will accept substantiation if the occupant can show proof of identification that he or she is an employee or agent of the federal government during the period of occupancy. Proof of employment can be shown by an official identification card issued by the appropriate branch of government and proof of traveling at the direction of the federal government can be shown by an affidavit, letter or other attestation on official stationery that is signed by an authorized official of the appropriate federal government agency indicating that the employee or agent is traveling at the direction of the government during the period of occupancy.

We now turn to the statute purporting to grant exemption to the Corporation. The language of 42 USC § 8102(d) exempting the Corporation from taxation is clear. Congress expressly stated that the Corporation is exempt from *all* State taxes, except those involving real property. The language of the Corporation’s statute is similar to language in the Federal Crop Insurance Act, 7 U.S.C. § 1501 et seq., that the Massachusetts Supreme Judicial Court recently found to explicitly preempt any taxation by the Commonwealth of Massachusetts. See *Ace Property & Casualty Insur. Co. v. Commissioner of Revenue*, 2002 Mass. LEXIS 407 (June 28, 2002). See also *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90-100 (1983); *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 299-300 (1988). *Brown v. Hotel Employees*, 468 U.S. 491, 500-501 (1984); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware*, 414 U.S. 117, 127 (1973); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963); *National Private Truck Council, Inc. v. Commissioner of Revenue*, 426 Mass. 324 (1997); *Sawash v. Suburban Welders Supply Co., Inc.*, 407 Mass. 311 (1990).

Based on these authorities, we conclude that Congress explicitly intended the exemption to include the room occupancy excise as well as any other tax of the Commonwealth of Massachusetts, or of any county, municipality, or local taxing authority, other than real property tax. To implement this exemption, the Commissioner will utilize the same substantiation procedures and evidence for the Corporation and its employees as those set forth in TIR 99-9 (for federal employees who use cards where the government is billed directly), and TIR 01-21 (for federal employees who themselves pay for the occupancy and are later reimbursed by the government).

In TIR 99-9, the Commissioner stated that the Massachusetts Department of Revenue has agreed to

participate in the USA SmartPay Program. Authorized purchases made with GSA cards that begin with 4486 (Visa/Mastercard), 4716 (Visa/Mastercard), and 5568 (Visa/MasterCard) and that do not have 1, 2, 3, or 4 as the sixth digit are billed directly to the federal government. In keeping with the rules announced in TIR 99-9 for federal government employees using a card billed directly to the government, a Corporation employee using a GSA card that is billed directly to the Corporation must present personal identification at the time of purchase to evidence that the transaction is exempt from taxation.

Where the employee of the Corporation pays for the occupancy and is later reimbursed, the rules of TIR 01-21 apply. Thus, if a Corporation employee is acting within the scope of his or her official duties (as an employee or other agent) for the Corporation, and in that capacity stays in a hotel, or other place of public accommodation, that occupancy is exempt, so long as the employee provides the operator of the establishment with the following:

1. proof of identification that the occupant is an employee or agent of the Corporation, and
2. proof that the occupant is traveling at the direction of the Corporation for the period of occupancy.

Evidence that the occupant is an employee or agent of the Corporation may include an official identification card issued by the Corporation. Evidence that the occupant is traveling at the direction of the Corporation may include such documentation as an affidavit, letter or other attestation on official stationery, signed by an authorized official of the Corporation indicating that the occupant is traveling at the direction of the Corporation during the period of occupancy. Operators of establishments subject to the room occupancy excise must retain this documentation in order to substantiate claims for exemption under G.L. c. 64G.

#### CONCLUSION

The Corporation is exempt from the room occupancy excise. Therefore, no tax is due on transfers of occupancy to the Corporation's employees. To substantiate a claim of exemption, the Corporation may use the same substantiation procedures and evidence set forth in TIR 99-9 (for employees using cards billed directly to the Corporation) and TIR 01-21 (for employees who themselves pay for the stay and are later reimbursed by the Corporation).

Very truly yours,

/s/Alan LeBovidge

Alan LeBovidge  
Commissioner of Revenue

AL:DMS:wrđ

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