



STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
TAX DIVISION

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Governor

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Tax Commissioner

January 19, 1999

Floyd M. Sayre, Jr. CAE, CMP
Organization Management Services
P. 1335
Charleston, West Virginia 25325

Re: West Virginia Hotel Occupancy Tax and Federal and State Credit Unions

Dear Mr. Sayer:

This is in reply to your letter of December 28, 1998, to Dale W. Steager, asking whether credit unions formed under chapter 31C of the Code of West Virginia are exempt from paying hotel and motel occupancy taxes (hereinafter "hotel occupancy tax") imposed under article 18, chapter 7 of the Code of West Virginia.

Response: When a hotel or motel directly bills a federal or state credit union for rooms occupied by their employees, the transaction is exempt from hotel occupancy tax, just as the transaction is exempt from West Virginia consumers sales and service taxes. When the employee of a federal or state credit union pays for the room and then is reimbursed by the credit union, the transaction is not exempt from either the hotel occupancy tax or the consumers sales and service tax.

A local hotel occupancy tax may be imposed by county commissions and municipalities under authority granted to them by the Legislature in article 18, chapter 7 of the Code of West Virginia.

W. Va. Code § 7-18-1 (hotel occupancy tax) reads:

(a) *Authority to impose.* – On and after the first day of July, one thousand nine hundred eighty-five, any county or municipality may impose and collect a privilege tax upon the occupancy of hotel rooms located within its taxing jurisdiction. Such tax shall be imposed and collected as provided in this article.

(b) *Municipal tax.* – A municipal hotel tax shall be imposed by ordinance enacted by the governing body of the municipality, in accordance with the provisions of article eleven, chapter eight of this code. Such tax shall be imposed uniformly throughout the

municipality; and the tax shall apply to all hotels located within the corporate limits of the municipality, including hotels owned by the state or by any political subdivision of this state.

(c) *County tax.* -- A county hotel tax shall be imposed by order of the county commission duly entered of record. Such tax shall be imposed uniformly throughout the county: *Provided*, That no county commission may impose its tax on hotels located within the corporate limits of any municipality situated, in whole or in part, within the county: *Provided, however*, That the tax collected by a hotel owned by a municipality but located outside the corporate limits of such municipality pursuant to this article shall be remitted to the municipality owning such hotel for expenditure pursuant to the provisions of section fourteen of this article. The tax shall apply to all hotels located outside the corporate limits of a municipality, including hotels owned by the state or any political subdivision of this state.

(d) The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room: *Provided*, That the tax shall not be imposed on any consumer occupying a hotel room for thirty or more consecutive days.

Application of this tax to federal, state and local governments and their employees is explained in W. Va. Code § 7-18-5 (occupancy billed to government agencies or employees), which reads:

(a) Hotel room occupancy billed directly to the federal government shall be exempt from this tax: *Provided*, That rooms paid for by a federal government employee for which reimbursement is made shall be subject to this tax.

(b) Hotel room occupancy billed directly to this state or its political subdivisions shall be exempt from this tax: *Provided*, That rooms paid for by an employee of this state for which reimbursement is made shall be subject to this tax.

Credit unions formed under chapter 31C of the Code of West Virginia are exempt from state and local taxation as provided in W. Va. Code § 31C-2-8 (tax exemption), which reads:

(a) Any credit union organized under this or any other credit union act and all shares and deposits therein shall be exempt from all taxation now or hereafter imposed by this state or any taxing authority within this state. No law which taxes corporations in any form, or the shares or deposits thereof, or the accumulation thereon, shall apply

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to any such credit union; except that any real property and any tangible personal property owned by any such credit union shall be subject to taxation to the same extent as other similar property is taxed: *Provided*, That this exception shall not permit the imposition of any sales or use taxes on the credit union.

(b) The shares of any such credit union shall not be subject to stock, transfer taxes, either when issued or when transferred from one member to another.

(c) The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

For state and local tax purposes, West Virginia credit unions are exempt from tax like the State of West Virginia. Therefore, if payment for a hotel or motel room is billed directly to the credit union, local hotel occupancy tax may not be added to the amount billed for the room. On the other hand, if the employee of the credit union pays for the room, whether in cash or with a credit card for which the employee is responsible for paying, local hotel occupancy tax, if any, is due and payable by the employee.

The Federal Credit Union Act, 12 U.S.C. § 1751 et seq., exempts federal credit unions from all taxation imposed by the United States or by any state or local taxing authority, except tax on its real and tangible personal property. 12 U.S.C. § 1768, taxation, reads:

The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such Federal credit unions shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. Nothing herein contained shall prevent holdings in any Federal credit union organized hereunder from being included in the valuation of the personal property of the owners or holders thereof in assessing taxes imposed by authority of the State or political subdivision thereof in which the Federal credit union is located; but the duty or burden of collecting or enforcing the payment of such a tax shall not be imposed upon any such Federal credit union and the tax shall not exceed the rate of taxes imposed upon holdings in domestic credit unions.

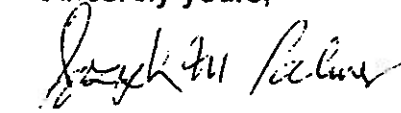
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For state and local tax purposes, federal credit unions are exempt from tax like the United States government. Therefore, if payment for a hotel or motel room is billed directly to the federal credit union, local hotel occupancy may not be added to the amount billed for the room. On the other hand, if the employee of the credit union pays for the room, whether in cash or with a credit card for which the employee is responsible for paying, local hotel occupancy tax, if any, is due and payable by the employee.

If we may be of further service, please do not hesitate to contact us.

Sincerely yours,



Joseph M. Palmer
Tax Commissioner

JMP/dws