THE CITY OF SAN DIEGO

**TRANSIENT OCCUPANCY TAX (TOT) CODE §35.0111 -
CURRENT POLICIES REGARDING THE EXEMPTION OF EMPLOYEES OF THE UNITED STATES GOVERNMENT AND ITS INSTRUMENTALITIES**

Dear Hotel/Motel Operator:

Prior to April 1997, the City of San Diego allowed an exemption only if the hotel rents were paid directly by the Federal governmental agency or their instrumentalities. Cash, personal checks, or personal credit cards from the transient were not acceptable for purposes of the exemption.

In late 1996, the United States Ninth Circuit Court of Appeals ruled that employees of the Federal government or its instrumentalities are exempt from Transient Occupancy Tax regardless of the form of payment if on official business. In other words, an employee could be exempt from the tax when paying hotel rents with cash, personal check, or personal credit card. An instrumentality has been defined by the courts as an agency so closely connected to the government that the two cannot realistically be viewed as separate entities. For example, the courts have generally considered Federal credit unions to be instrumentalities of the Federal government. However, independent contractors of the Federal government are not considered instrumentalities and are not exempt from TOT.

To qualify for exemption, the government employee must complete an exemption form provided by the City Treasurer. We have enclosed the form that the transient must fill out declaring they are on official business. Please make sure that the transient fills out the form completely and signs the form. <u>If the hotel/motel fails to get this completed form from the transient, the exemption will not be allowed by the City and the hotel/motel may be responsible for the TOT</u>.

Please also note that if the transient's stay is in whole or in part for non-business purposes, only the portion relating to business purposes is exempt. It is anticipated that some guests will check in at the hotel/motel the night before a conference begins and stay the evening the conference ends. This is considered acceptable by the City of San Diego for exemption purposes. Anything beyond that is considered to be non-business occupancy, and therefore, not entitled to exemption.

Members of the employee's family would not qualify for the exemption. If additional charges are incurred due to the occupancy of the room by additional persons (beyond the charges incurred by the exempt employee), TOT should be collected on the additional charges.

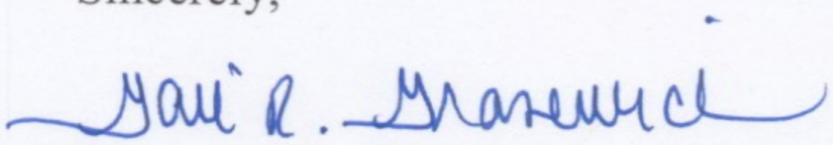
Proof of employment (employee identification card, travel orders, etc.) must also be provided to the hotel/motel. A document (such as a letter from the Federal agency) that identifies the transient as being an employee of that agency and stating that the transient is on official business would also be acceptable. If there is a break in stay (guest checks out and then returns), a new exemption form is required. Also, if one guest is paying for multiple rooms, a separate

Transient Occupancy Tax • Office of the City Treasurer
1200 Third Avenue, Suite 100 • San Diego, CA 92101
Tel (619) 236-6647 Fax (619) 236-7134

exemption form and proof of employment as identified above is required from an employee staying in each room. The hotel/motel operator should photocopy and retain any documentation in their files along with the exemption form to support the claim for exemption.

Please note that these changes do not apply to any State agencies nor do they apply to any local (City and County) agencies.

Sincerely,



Gail R. Granewich
City Treasurer

Enclosures