

PUBLICATION

When You Check Out, Don't Forget the Shampoo:

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Hotels stock rooms with soaps, shampoos, conditioners, mouthwashes, shower caps, pens, notepads and similar non-reusable consumable items (hotel consumables) for the use of hotel guests. Guests are free to use the items, not use the items or take the items with them upon checkout. A guest is not offered a room at a reduced rate if she does not want or does not use the hotel consumables.

In *DTWC Corporation v. Combs*, Red Lion Hotels, Inc. operated a hotel in Austin, Texas (DWTC was the successor-in-interest to Red Lion). Red Lion charged a hotel guest asset fee for overnight lodging, which was subject to state and local hotel occupancy taxes. In addition to the use of a hotel room and access to hotel facilities, such as a swimming pool and exercise facility, guests were free to use the hotel consumables as they saw fit.

The hotel consumables were not manufactured by Red Lion. Rather, Red Lion purchased the consumables from suppliers and then provided them in each hotel room for use by its guests. In an April 11, 2013 decision, a Texas Court of Appeals ruled that Red Lion's purchases of the hotel consumables from its suppliers qualified for the Texas resale exemption from Texas state and local sales taxes. According to the court, the consumables were tangible personal property purchased by Red Lion, placed in a hotel room for use by its guests in the same form or condition in which the consumables had been purchased by Red Lion, and the hotel guests paid a fee (i.e., consideration) to use a room and its amenities, including the hotel consumables. As a result, the Court of Appeals held that the hotel consumables qualified for the resale exemption when Red Lion purchased them from suppliers.

The reasoning of the Texas Court of Appeals in *DTWC Corporation* could also apply to other states and their resale exemptions. In addition, certain types of services purchased by a hotel that are normally subject to sales tax may also be eligible for resale exemptions. For example, in *Hyatt Corp. v. Limbach*, 69 Ohio St. 3d 537 (1994), the purchase of cleaning and laundry services by a hotel (which were services subject to Ohio sales tax) qualified for the Ohio resale exemption. The benefit of the service provided was determined by the Ohio Supreme Court to have been resold to hotel guests in the form of clean linens.

Hotel operators should review their sales tax returns, as well as their sales tax policies and procedures, to determine if they are taking advantage of available resale exemptions. If sales tax has been paid on purchases of hotel consumables (and possibly certain services), consideration should be given to filing sales tax refund claims. And, as for hotel guests, don't take the linens, but remember to take the shampoo.¹

¹According to the Court of Appeals in *DTWC Corporation*, "DTWC asserts that the cost of the hotel consumables is factored into the room rate, thus settling, at least on this record, the dilemma of whether it is okay to take these items home with you when you check out of your hotel room.