

ARTICLE II. TRANSIENT OCCUPANCY TAX

Sec. 11-20. Definitions

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) **Hotel.** Any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, including any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or portion thereof.

(b) **Occupancy.** The use or possession, or the right to use or possession, of any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

(c) **Operator.** The person who is the proprietor of a hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent or any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this article and shall have the same duties and liabilities as the principal. Compliance with the provisions of this article by either the principal or the managing agent shall be considered to be compliance by both.

(d) **Rent.** The consideration charged, whether or not received, for the occupancy of space in a hotel, valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction whatsoever.

(e) **Tax administrator.** The tax collector/county clerk of the county.

(f) **Transient.** Any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

(Ord. No. 583, §2; Ord. No. 788, §§ 2, 3, 4; Ord. No. 851, §1; Ord. No. 1218, §1, §4; Ord. No. 1465, §1)

Sec. 11-21. Imposition of tax, Payment of tax by transient

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of five per cent of the rent charged by the operator. Such tax constitutes a debt owned by the transient to the county which is extinguished only by

payment to the operator or to the county. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator.

(Ord. No. 583, §3; Ord. No. 728, §1; Ord. No. 788, §§ 5, 6; Ord. No. 851, §2; Ord. No. 1218, §2, §5; Ord. No. 1465, §1)

Sec. 11-22. Exemptions from payment of tax

No tax levied by this article shall be imposed upon:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the county to impose the tax provided in this article; provided, that no exemption shall be available and that tax shall be imposed upon any officer or employee of the United States or this state and political subdivisions of the state when traveling on official business.

(b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

(c) No exemption shall be granted except upon a claim made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

(Ord. No. 583, §4; Ord. No. 594, §1; Ord. No. 851, §3; Ord. No. 1218, §3, §6; Ord. No. 1465, §1)

Sec. 11-23. Collection of tax by operator; advertisements that tax will not be collected prohibited

Every operator shall collect the tax imposed by this article to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirect, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner provided in this article.

(Ord. No. 583, §5; Ord. No. 1465, §1)

Sec. 11-24. Registration of hotels; issuance of certificates

Each operator of any hotel renting occupancy to transients shall register such hotel with the tax administrator and obtain from the administrator a "Transient Occupancy Registration Certificate," to be at all times posted in a conspicuous place on the premises. All operators of hotels commencing business shall comply with this section

within thirty days after such commencement. Such certificate shall, among other things, state the following:

- (a) The name of the operator.
- (b) The address of the hotel.
- (c) The date upon which the certificate was issued.
- (d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, not to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this county. This certificate does not constitute a permit."

(Ord. No. 583, §6; Ord. No. 851, §4; Ord. No. 1465, §1)

Sec. 11-25. Filing of reports; remittance of tax

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator may establish shorter reporting periods for any certificate holder if the administrator deems it necessary in order to insure the collection of the tax and the administrator may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this article shall be held in trust for the account of the county until payment thereof is made to the tax administrator.

(Ord. No. 583, §7; Ord. No. 1465, §1)

Sec. 11-26. Penalties for delinquent payment

(a) **Original delinquency.** Any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten per cent of the amount of the tax, in addition to the amount of the tax.

(b) **Continued delinquency.** Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten per

cent of the amount of the tax, in addition to the amount of the tax and the ten per cent penalty first imposed.

(c) **Fraud.** If the tax administrator determines that the nonpayment of any remittance due under this article is due to fraud, a penalty of twenty-five per cent of the amount of the tax shall be added in addition to the penalties stated in subdivisions (a) and (b) of this section.

(d) **Interest.** In addition to the penalties imposed, any operator who fails to remit any tax imposed by this article shall pay interest at the rate of one-half of one per cent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(e) **Penalties merged with tax.** Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid under this article.

(Ord. No. 583, §8; Ord. No. 1465, §1)

Sec. 11-27. Determination of tax by tax administrator upon default of operator

If any operator shall fail or refuse to collect the tax imposed pursuant to this article, and to make, within the time provided in this article, any report and remittance of such tax or any portion thereof required by this article, the tax administrator shall proceed in such manner as the administrator may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the tax administrator shall procure such facts and information as the tax administrator is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the administrator shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this article. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the operator's last known place address. Such operator may, within ten days after the serving or mailing of such notice, make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator, shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five days written notice in the manner prescribed in this article to the operator to show cause at a time and place fixed in such notice why such amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this article of such determination and the amount of

such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in section 11-31.

(Ord. No. 583, §9; Ord. No. 1465, §1)

Sec. 11-28. Refunds

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the county under this article, it may be refunded as provided in subdivisions (b) and (c) of this section; provided, that a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within three years of the date of payment. The claim shall be on forms furnished by the tax administrator.

(b) Any operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a transient; provided, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the county by filing a claim in the manner provided in subdivision (a) of this section, but only when the tax was paid by the transient directly to the tax administrator, or when the transient having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right by written records showing entitlement.

(Ord. No. 583, §12; Ord. No. 778, §1; Ord. No. 1465, §1)

Sec. 11-29. Records to be kept

It shall be the duty of every operator liable for the collection and payment to the county of any tax imposed by this article to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as the operator may have been liable for the collection of and payment to the county, which records the tax administrator shall have the right to inspect at all reasonable times.

(Ord. No. 583, §11; Ord. No. 1465, §1)

Sec. 11-30. Collection of tax by court action

Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owned by the transient to the county. Any such tax collected by an

operator which has not been paid to the county shall be deemed a debt owed by the operator to the county. Any person owing money to the county under the provisions of this article shall be liable to an action brought in the name of the county for the recovery of such amount.

(Ord. No. 583, §13; Ord. No. 1465, §1)

Sec. 11-31. Appeals

Any operator aggrieved by any decision of the tax administrator with respect to any amount of such tax, interest and penalties, if any, may appeal to the board of supervisors by filing a notice of appeal with the clerk to the board of supervisors within fifteen days of the serving or mailing of the determination of tax due. The board of supervisors shall fix a time and place for hearing such appeal, and the clerk to the board of supervisors shall give notice in writing to such operator at the operator's last known place of business. The findings of the board of supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

(Ord. No. 583, §10; Ord. No. 1465, §1)

Sec. 11-32. Violations

No operator or other person shall fail or refuse to register as required in this article, or furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the tax administrator, or render a false or fraudulent return or claim. No person required to make, render, sign or verify any report or claim shall make any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article to be made.

(Ord. No. 583, §14; Ord. No. 1465, §1)