

CHAPTER 195
Hotel-Motel Transient Occupancy Tax

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CROSS REFERENCES

195.01 DEFINITIONS.

When used in this chapter and unless otherwise distinctly expressed, the following words and phrases shall have the meanings set out herein:

(a) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

(b) "Director" means the Director of Finance of the City.

(c) "Hotel or motel" means every establishment, including motor inns, kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered for a consideration to guests, in which five (5) or more rooms

are used for the accommodations of such guests, whether such rooms are in one or several structures, and referred to in this chapter as "hotel".

(d) "Transient accommodation" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests in which four (4) or less rooms are used for the accommodations of such guests, whether such rooms are in one (1) or several structures.

~~(d)~~ (e) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

~~(e)~~ (f) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

~~(f)~~ (g) "Operator" means any person who is the proprietor of the hotel, or transient accommodation whether in the capacity of owner, lessee, licensee or any other capacity. Where the operator performs his functions through a managing agent of any type or character, other than an employee, the managing agent shall be deemed an operator for the purposes of this chapter, and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

~~(g)~~ (h) "Occupancy" means the use or possession, or the right to use or possession of any room or rooms or space or portion thereof, in any hotel or transient accommodation for dwelling, lodging or sleeping purposes. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibits, sample or display space shall not be considered occupancy within the meaning of this definition unless the person exercising occupancy uses or possesses, or has the right to use or possess all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

195.02 IMPOSITION OF TAX.

(a) For the purpose of providing revenue with which to meet the needs of the City, for the use of the general fund of the City, an excise tax is hereby levied on transactions by which lodging by a hotel or transient accommodation is or is to be furnished to transient guests.

(b) The tax is three percent (3%) ~~on~~ of all rents paid or to be paid by the transient guest for the lodging. ~~Such tax constitutes a debt owed by the transient guest to the City, which is extinguished only by payment to the operator as trustee for the City, or to the City.~~ The tax applies and is collectible by the operator at the time the lodging is furnished ~~regardless of the time when the price is paid.~~

(c) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all lodging furnished by hotels or transient accommodation in the City to transient guests is subject to the tax until the contrary is established.

195.03 EXEMPTIONS.

(a) No tax shall be imposed under this chapter:

(1) Upon rents not within the taxing power of the City under the constitution or laws of Ohio or the United States;

(2) Upon rents paid by the State or any of its political subdivisions.

(b) No exemption claimed under subsection (a)(2) hereof shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Director. All claims of exemption shall be made in the manner prescribed by the Director.

195.04 REFUSAL TO PAY; FALSE EVIDENCE OF TAX-EXEMPT STATUS.

No transient guest shall refuse to pay the full and exact tax as required by this chapter, or present to the operator false evidence indicating that the lodging as furnished is not subject to the tax.

195.05 TRANSIENT GUEST TO PAY TAX.

The tax imposed by this chapter shall be paid by the transient guest to the operator, and each operator shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging and remit such tax to the City.

If the transaction is claimed to be exempt, the transient guest shall furnish to the operator, and the operator shall obtain from the transient guest, a certificate specifying the reason that the sale is not legally subject to the tax. If no certificate is obtained, it shall be presumed the tax applies.

195.06 TAX TO BE SEPARATELY STATED AND CHARGED.

The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill or statement or charge made for such occupancy issued or delivered by the operator, and the tax shall be paid by

the occupant to the operator as trustee for and on account of the City, and the operator shall be liable for the collection thereof and for the tax.

No operator of a hotel or transient accommodation shall advertise or state in any manner, whether directly or indirectly, 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 hereinafter provided.

195.07 REGISTRATION.

Within thirty days after the effective date of this chapter, or within thirty days after commencing business, whichever is later, each operator of any hotel or transient accommodation renting lodging to transient guests shall register such hotel with the Director of Finance, and obtain from him a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address of the hotel or transient accommodation;
- (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 Hotel-Motel Transient Occupancy Tax ordinance by registering with the Director of Finance for the purpose of collecting from transient guests the Hotel-Motel Transient Occupancy Tax and remitting such tax to the Director. This certificate does not constitute a permit".

195.08 RECORDS.

Each operator shall keep complete and accurate records of lodging furnished, together with a record of the tax collected thereon, which shall be the amount due under this chapter, and shall keep all invoices, and such other pertinent documents. If the operator furnishes lodging not subject to the tax, the operator's records shall show the identity of the transient guest, if the sale was not exempted by reason of such identity, or the nature of the transaction if exempted for any other reason. Such records and other documents shall be opened during business hours to the inspection of the Director of Finance, and shall be preserved for a period of four years, unless the Director, in writing, consents to their destruction within that period, or by any orders requesting that such records be kept for a longer period of time.

195.09 REPORTING AND REMITTING.

Each operator shall, on or before the last day of the month following the close of each calendar quarter year, or at the close of any shorter reporting period which may be established by the Director of Finance, make a return to the Director, on forms provided by him of the total rents charged and received and the amount of tax collected by transient occupancies. All claims for exemption from tax filed by occupants with the operator during the reporting period shall be filed with the report. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. The Director may establish shorter reporting periods for any certificate holder if ~~he deems~~ **deemed** it necessary in order to insure collection of the tax and ~~he~~ may require further information in the return if such information is pertinent to the collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment thereof is made to the Director. All returns and payments submitted by each operator shall be treated as confidential by the Director and shall not be released by him except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of Ohio, the County of Lucas, or the City for official use only.

195.10 PENALTIES AND INTEREST.

(a) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty equal to ten percent (10%) of the amount of the tax, in addition to 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 equal to ten percent (10%) of the amount of the tax and previous penalty in addition to the tax and the ten percent (10%) penalty first imposed. An additional penalty equal to ten percent (10%) of the total tax and penalty of the previous thirty-day period shall be added for each successive thirty-day period that the occupant remains delinquent.

(c) Fraud. If the Director of Finance determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsection (a) and (b) hereof.

(d) Interest. In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of ~~one-half of one percent (1/2%)~~ **one percent (1%)** 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 During Pendency of Hearing or Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing provided for herein, nor during the pendency of any appeal provided for herein.

(f) Abatement of Interest and Penalty. In cases where a return has been filed in good faith, and an assessment has been paid within the time prescribed by the Director, the Director may abate any charge of penalty or interest, or both.

195.11 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION BY DIRECTOR.

If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the Director of Finance shall proceed in such manner as ~~he may~~ deemed best to obtain facts and information on which to base his estimate of the tax due. As soon as the Director shall procure such facts and information ~~as he is able to obtain~~ upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, ~~he~~ shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director 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 his last known place of business. Such operator may within ten days after the serving or mailing of such notice make application in writing to the Director 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 Director shall become final and conclusive and immediately due and payable. If such application is made, the Director shall give not less than five days written notice in the manner prescribed herein 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 Director shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein 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 this chapter.

195.12 APPEAL; BOARD OF REVIEW.

Any operator aggrieved by any decision of the Director of Finance, with respect to the amount of such tax, interest and penalties, if any, may appeal to a Board of Review, consisting of the Director of Law as Chairman, the City Administrator as Secretary and the President of Council, by filing a notice of appeal with it within fifteen days of the serving or mailing of the determination of tax due. The Board shall fix a time and place for hearing such appeal, and shall give notice in writing to such operator at his last known place of

business. The findings of the Board 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.

195.13 ACTIONS TO COLLECT.

Any tax required to be paid by a transient guest under the provisions of this chapter shall be deemed a debt owed by the ~~transient guest~~ operator to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

195.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree.