

Title 3

REVENUE AND FINANCE

Chapters:

3.04 Transient Room Tax

Chapter 3.04

TRANSIENT ROOM TAX

Sections:

- 3.04.010 Title.
- 3.04.020 Definitions.
- 3.04.030 Tax imposed.
- 3.04.040 Collection of tax by operator -- Rules for collection.
- 3.04.050 Operator's duties.
- 3.04.060 Exemptions.
- 3.04.070 Registration of operation -- Form and contents -- Execution -- Certification of authority.
- 3.04.080 Due date -- Returns and payments.
- 3.04.090 Penalties and interest.
- 3.04.100 Deficiency determinations -- Fraud, evasion, and operator delay.
- 3.04.110 Redeterminations.
- 3.04.120 Security for collection of tax.
- 3.04.130 Lien.
- 3.04.140 Refunds.
- 3.04.150 Administration.
- 3.04.160 Appeals to common council.
- 3.04.170 Violations prohibited.
- 3.04.180 Misdemeanor -- Penalty.

3.04.010 Title. The ordinance codified in this chapter shall be known as the transient room tax ordinance of the city. (Ord. 107 §1, 1979.)

3.04.020 Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

(1) "Accrual accounting" means the operator enters the rent due from a transient on his records when the rent is earned whether or not it is paid.

(2) "Cash accounting" means the operator does not enter the rent due from a transient on

his records until rent is paid.

(3) "Hotel" means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for thirty (30) days or less, for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, mobile, manufactured, or modular homes, condominiums, public or private dormitory, fraternity, sorority, public or private club, space in mobile home parks, trailer parks, recreational vehicle parks, or similar structure or portion thereof so occupied, provided such occupancy is for less than a thirty (30) day period. (Ord. 107; Amended by Ord. 263, 1993)

(4) "Occupancy" means the use or possession, or the right to use or possession for lodging or sleeping purposes of any room or rooms in a hotel, or space in a mobile home park, trailer park, or recreational park or portion thereof. (Ord. 107; Amended by Ord. 263, 1993)

(5) "Operator" means the person who is proprietor of the hotel in any capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also 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 be considered to be compliance by both.

(6) "Person" means any individual, firm, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any group or combination acting as a unit.

(7) "Rent" means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel valued in money, goods, labor, credits, property, or other consideration valued in money, without any deduction.

(8) "Rent package plan" means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this chapter shall be the same charge made for rent when consideration is not part of a package plan.

(9) "Tax" means the tax payable by the transient, or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(10) "Tax administrator" means the city recorder.

(11) "Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of a hotel shall not be included in determining the thirty (30) day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel shall be deemed to be a transient until the thirty (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. 107 §2, 1979.)

3.04.030 Tax imposed. For the privilege of occupancy in any hotel, on or after the effective date of the ordinance codified in this chapter, each transient shall pay a tax in the amount of eight (8) percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. 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 city. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services, and commodities, other than the furnishing of rooms, accommodations, and parking space in mobile home parks or trailer parks. (Ord. 107 §3, 1979; Amended by Ord. 196, 1987).

3.04.040 Collection of tax by operator -- Rules for collection.

(1) Every operator renting rooms in the city, the occupancy of which is not exempted under the terms of this chapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the city.

(2) In all cases of credit or deferred payment of rent, the payment of tax to the operator shall not be liable for the tax until credits are paid or deferred payments are made.

(3) The tax administrator shall enforce provisions of this chapter and shall have the power to adopt rules and regulations not inconsistent with this chapter as may be necessary to aid in the enforcement.

(4) For rent collection on portions of a dollar, the first one (1) cent of tax shall be collected on ten (10) cents through twenty-nine (29) cents inclusive; and the second one (1) cent of tax on thirty (30) cents through forty-nine (49) cents; the third one (1) cent of tax on fifty (50) cents through sixty-nine (69) cents; the fourth one (1) cent of tax on seventy (70) cents through eighty-nine (89) cents; and the fifth one (1) cent of tax on ninety (90) cents through the next one dollar and nine cents (\$1.09) of rent. (Ord. 107 §4, 1979.)

3.04.050 Operator's duties. Each operator shall collect the tax imposed by this chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records, and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this chapter. (Ord. 107 §5, 1979.)

3.04.060 Exemptions. No tax imposed under this chapter shall be imposed upon:

(1) Any occupant for more than thirty (30) successive calendar days; a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient;

(2) Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidentally to his own use thereof;

(3) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people. (Ord. 107 §6, 1979.)

3.04.070 Registration of operation -- Form and contents -- Execution -- Certification of authority.

(1) Every person engaging or about to engage in business as an operator of a hotel in the city shall register with the tax administrator on a form provided by her. Operators engaged in business at the time the ordinance codified in this chapter is adopted must register not later than thirty (30) calendar days after passage of the ordinance codified in this chapter. Operators starting business after the ordinance codified in this chapter is adopted must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the tax administrator may require. The registration shall be signed by the operator.

(2) The tax administrator shall within ten (10) days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business for each registrant. Certificates shall be nonassignable and nontransfer- able and shall be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. Said 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 Transient Room Tax Ordinance of the City of Sisters by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by said City 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, or 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 the City of Sisters. This certificate does not constitute a permit." (Ord. 107 §7, 1979.)

3.04.080 Due date -- Returns and payments.

(1) The tax imposed by this chapter shall be paid by the transient to the operator at the

time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the tax administrator on a monthly basis on the fifteenth (15th) day of the month for the preceding month; and are delinquent on the last day of the month in which they are due.

(2) On or before the fifteenth (15th) day of the month following each month of collection, a return for the preceding month's tax collections shall be filed with the tax administrator. The return shall be filed in such form as the tax administrator may prescribe by every operator liable for payment of tax.

(3) Returns shall show the amount of tax collected or otherwise due for the related period. The tax administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period and an explanation in detail of any discrepancy between such amounts and the amounts of rents exempt, if any.

(4) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the tax administrator at her office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(5) For good cause, the tax administrator may extend, but not to exceed one (1) month the time for making any return or payment of tax. No further extensions shall be granted, except by the common council. Any operator to whom an extension is granted shall pay interest at the rate of one (1) percent per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this chapter.

(5) The tax administrator, if she deems it necessary in order to insure payment or facilitate collection by the city of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than monthly periods. (Ord. 107 §8, 1979.)

3.04.090 Penalties and interest.

(1) Original Delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this chapter prior to delinquency shall pay a penalty of ten (10) percent of the amount of the tax due in addition to the amount of the tax.

(2) Continued Delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who fails to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first becomes delinquent, shall pay a second delinquency penalty of fifteen (15) percent of the amount of the tax due plus the amount of the tax and the ten (10) percent penalty first imposed.

(3) Fraud. If the tax administrator determines that the nonpayment of any remittance due

under this chapter is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

(4) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half ($\frac{1}{2}$) of one (1) percent per month or fraction thereof without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

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

(6) Petition for Waiver. Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated; provided, however, the operator may petition the common council for waiver and refund the penalty or any portion thereof and the common council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof. (Ord. 107 §9, 1979.)

3.04.100 Deficiency determinations -- Fraud, evasion, and operator delay.

(1) Deficiency Determination. If the tax administrator determines that the returns are incorrect, she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within her possession or that may come into her possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more than one (1) period and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 3.04.090.

(a) In making a determination, the tax administrator may offset overpayments, if any, which may have been previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties, and interest on the underpayment. The interest on underpayment shall be computed in the manner set forth in Section 3.04.090.

(b) The tax administrator shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the operator at his address as it appears in the records of the tax administrator. In case of service by mail or any notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(c) Except in the case of fraud, intent to evade this chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires the later.

(d) Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the tax administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

(2) Fraud, Refusal to Collect, Evasion. If any operator fails or refuses to collect said tax or to make, within the time provided in this chapter any report and remittance of said tax or any portion thereof required by this chapter, or makes a fraudulent return or otherwise wilfully attempts to evade this chapter, the tax administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the tax administrator has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect the same and to report and remit said tax, 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 tax administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the tax administrator of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the tax administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

(3) Operator Delay. If the tax administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the city will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay same determination to the tax administrator after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the tax administrator. (Ord. 107 §10, 1979.)

3.04.110 Redeterminations.

(1) Any person against whom a determination is made under Section 3.04.100, or any person directly interested, may petition for redetermination and redemption and refund within the time required in Section 3.04.100. If a petition for redetermination and refund is not filed within the time requested in Section 3.04.100, the redetermination becomes final at the expiration of the allowable time.

(2) If a petition for redetermination and refund is filed within the allowable period, the tax administrator shall reconsider the determination, and, if the person has so required in his petition, shall grant the person an oral hearing and shall give him ten (10) days' notice of the time and place of the hearing. The tax administrator may continue the hearing from time to time as may be necessary.

(3) The tax administrator may decrease or increase the amount of the determination as a result of the hearing and if an increase is determined such increase shall be payable immediately after the hearing.

(4) The order of decision of the tax administrator upon a petition for redetermination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the common council within ten (10) days after service of such notice. (Ord. 107 §11, 1979.)

3.04.120 Security for collection of tax.

(1) The tax administrator, whenever he deems it necessary to insure compliance with this chapter, may require any operator subject thereto to deposit with him such security in the form of cash, bond, or other security as the tax administrator may determine. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such manner as the tax administrator deems proper, or five thousand (\$5,000) dollars, whichever amount is the lesser. The amount of the security may be increased or decreased by the tax administrator subject to the limitations herein provided.

(2) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the tax administrator may bring an action in the courts of this state, or any other state, or of the United States in the name of the city to collect the amount delinquent together with penalties and interest. (Ord. 107 §12, 1979.)

3.04.130 Lien.

(1) The tax imposed by this chapter, together with the interest and penalties herein provided and the filing fees paid to the clerk of the county, and advertising costs which may be incurred when same becomes delinquent as set forth in this chapter, shall be and, until paid, remain a lien from the date of its recording with the clerk of the county, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator within the city and may be foreclosed on and sold as may be necessary to discharge said lien, if the lien has been recorded. Notice of lien may be issued by the tax administrator or his deputy whenever the operator is in default in the payment of said tax, interest and penalty and shall be recorded, and a copy sent to the delinquent operator. The personal property subject to such lien seized by any deputy or employee of the tax administrator may be sold by the department seizing the same at public auction after ten (10) days' notice which shall mean one (1) publication in a newspaper published in the city.

(2) Any lien for taxes as shown on the records of the proper county official shall, upon the payment of all taxes, penalties, and interest thereon, be released by the tax administrator when the full amount determined to be due has been paid to the city and the operator or person making such payment shall receive a receipt therefor stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied.

(Ord. 107 §13, 1979.)

3.04.140 Refunds.

(1) Operator Refunds. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, it may be refunded, provided a verified claim in writing therefor stating the specific reason upon which the claim is founded, is filed with the tax administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the tax administrator. If the claim is approved by the tax administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to such operator, his administrators, executors or assigns.

(2) Transient Refunds. Whenever the tax required by this chapter has been collected by the operator, and deposited by the operator with the tax administrator, and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded by the tax administrator to the transient, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the tax administrator within three (3) years from the date of payment. (Ord. 107 §14, 1979.)

3.04.150 Administration.

(1) Operators' Records. Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for a period of three (3) years and six (6) months after they come into being.

(2) Examination of Records -- Investigations. The tax administrator or any person authorized in writing by her may examine during normal business hours, the books, papers, and accounting records relating to room sales of any operator after notification to the operator liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made, or, if no return is made by the operator, to ascertain and determine the amount required to be paid.

(3) Confidential Character of Information Obtained -- Disclosure Unlawful. It is unlawful for the tax administrator or any person having an administrative or clerical duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a transient occupancy registration certificate, or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person; provided, that nothing in this subsection shall be construed to prevent:

(a) The disclosure to, or the examination of, records and equipment by another city official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provision of this chapter or collecting taxes imposed hereunder;

(b) The disclosure after the filing of a written request to that effect, to the taxpayer himself, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest and penalties; provided further, however, that the city attorney approves each such disclosure and that the tax administrator may refuse to make any disclosure referred to in this subdivision when in his opinion the public interest would suffer thereby;

(c) The disclosure of the names and addresses of any persons to whom transient occupancy registration certificates have been issued;

(d) The disclosure of general statistics regarding taxes collected or business done in the city. (Ord. 107 §15, 1979.)

3.04.160 Appeals to common council. Any person aggrieved by any provision of the tax administrator may appeal to the common council by filing a notice of appeal with the tax administrator within ten (10) days of the administrator's decision. The tax administrator shall transmit said notice and fix a time and place for hearing such appeal. The council shall give the appellant not less than ten (10) days' written notice of the time and place of hearing of said appealed matter. (Ord. 107 §16, 1979.)

3.04.170 Violations prohibited. It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to 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 to render a false or fraudulent return. No person shall make, render, sign, or verify any report, with intent to defeat or evade the determination of any amount due required by this chapter. (Ord. 107 §18, 1979.)

3.04.180 Misdemeanor -- Penalty. Any person wilfully violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred (500) dollars or by imprisonment in the county jail for a period of not more than six (6) months or by both such fine and imprisonment. (Ord. 107 §19, 1979.)