

CHAPTER 173
Transient Occupancy Tax

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CROSS REFERENCES

Power to levy - see Ohio R.C. 5739.02(c)

173.01 DEFINITIONS.

For purposes of this chapter the following words and phrases shall have the following meanings ascribed to them respectively. Other words and phrases shall have the meanings ascribed to them under Chapter 171 of the Blue Ash Codified Ordinances.

- (a) "Hotel" means every establishment 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 accommodation of such guests, whether the rooms are in one or several structures. The term shall include a motel if the establishment meets the definition of hotel as contained in this section.
- (b) "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms or space or portion thereof, in any hotel 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 exhibit, 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 the room or suite of rooms for dwelling, lodging or sleeping purposes.

- (c) "Operating" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, 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 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.
- (d) "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 deductions therefrom whatsoever.
(Ord. 86-89. Passed 9-11-86.)

173.02 RATE OF TAX.

(a) Commencing on February 1, 1997, for the purpose of providing revenue for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, and capital improvements by the City, there is levied a tax of three percent (3.0%) on all rents received by a hotel for lodging furnished to transient guests. This tax shall be known as the transient occupancy tax.
(Ord. 96-82. Passed 12-12-96.)

(b) This tax constitutes a debt owed by the transient guest to the City which is satisfied only by payment to the operator as trustee for the City, or to the City. The transient guest 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 guest'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 Commissioner may require that the tax be paid directly to the Tax Commissioner.
(Ord. 86-89. Passed 9-11-86.)

173.03 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 the State of Ohio or the United States;
- (2) Upon rents paid by the State of Ohio or any of its political subdivisions;
- (3) Upon rents of two dollars (\$2.00) a day or less.

(b) No exemption claimed under subsections (a)(1) or (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 or satisfactory to the Tax Commissioner. All claims of exemption under subsection (a)(3) hereof shall be made in the manner prescribed by or satisfactory to the Tax Commissioner.

(Ord. 86-89. Passed 9-11-86.)

173.04 TAX TO BE SEPARATELY STATED AND CHARGED.

(a) 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 the occupancy issued or delivered by the operator. 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.

(b) No operator of a hotel 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.

(Ord. 86-89. Passed 9-11-86.)

173.05 REGISTRATION.

Within thirty (30) days after November 1, 1986 or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting lodging to transient guests shall register the hotel with the Tax Commissioner and obtain from him or her a transient occupancy registration certificate which shall at all times be posted in a conspicuous place on the premises. This certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address and business telephone number 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 Occupancy Tax Ordinance by registering with the Tax Commissioner for the purpose of collecting from transient guests the Transient Occupancy Tax and remitting such tax to the Tax Commissioner. This certificate does not constitute a permit."

(Ord. 86-89. Passed 9-11-86.)

173.06 REPORTING AND REMITTING.

(a) 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 Commissioner, make a return to the Tax Commissioner, on forms obtainable from him or her, of the total rents charged and received and the amount of tax collected for 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 Tax Commissioner. The Tax Commissioner may establish shorter reporting periods for any certificate holder if he/she deems it necessary in order to insure collection of the tax and he/she may require further information in the return if the 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 Tax Commissioner. All returns and payments submitted by each operator shall be treated as confidential by the Tax Commissioner and shall not be released 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 Hamilton, or the City of Blue Ash for official use only. The nonavailability or failure to obtain forms shall not relieve an operator from the timely payment of the tax.

(b) No person, including any officer of a corporation or employee of a corporation having control or supervision of or charged with the responsibility of filing returns, shall fail to file any return or report required to be filed by this chapter, or file or cause to be filed any incomplete, false or fraudulent return, report, or statement, or aid or abet another in the filing of any false or fraudulent return, report or statement.

(c) If any operator required to file quarterly returns under this chapter fails, on two (2) consecutive quarters within a twelve (12) month period, to file the returns when due or to pay the tax thereon, or if any operator authorized by the Tax Commissioner to file returns at less frequent intervals, fails on two (2) or more occasions within a twenty-four (24) month period, to file the returns when due or to pay the tax due thereon, the Tax Commissioner may require the operator to furnish security in an amount equal to the average tax liability of the operator for a period of one (1) year, as determined by the Tax Commissioner from a review of returns or other information pertaining to the operator, which amount shall in no event be less than one hundred dollars (\$100.00). This security may be in the form of an advance tax payment to be applied to pay the tax due on subsequent returns, or a corporate surety bond, satisfactory to the Tax Commissioner, conditioned upon payment of the tax due with the returns from the operator. This security must be filed within ten (10) days following the operator's receipt of the notice from the Tax Commissioner of its requirements. A corporate surety bond filed under this section shall be returned to the operator if, for a period of twelve (12) consecutive months following the date the bond was filed, the operator has filed all returns and remitted payment therewith within the time prescribed in this chapter.

(d) If any operator required to file returns and to remit tax due to the City under the provisions of this chapter, fails for any reason to make the filing or payment, any of its officers or employees having control or supervision of or charged with the responsibility of filing returns and making payments, shall be personally liable for the failure. The dissolution of a corporation shall not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or remit tax due. The sum due for this liability may be collected by assessment in the manner provided in this chapter.

(Ord. 86-89. Passed 9-11-86.)

173.07 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 (30) 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 (30) day period shall be added for each successive thirty (30) day period that the account remains delinquent.

(c) Fraud. If the Tax Commissioner 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 subsections (a) and (b) hereof.

(d) 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 percent (1%) per month, or fraction thereof, on the amount of 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 for the period of the pendency of any hearing provided for in this chapter, nor for the period of the pendency of any appeal to the Tax Commissioner provided for in this chapter.
(Ord. 86-89. Passed 9-11-86.)

173.08 FAILURE TO COLLECT AND REPORT TAX, DETERMINATION OF TAX BY TAX COMMISSIONER.

(a) If any operator shall fail or refuse to collect the tax and fail 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 Tax Commissioner shall proceed in such manner as he or she may deem best to obtain facts and information on which to base the estimate of the tax due. As soon as the Tax Commissioner procures whatever facts and information that he or she 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 the operator the tax, interest and penalties provided for by this chapter. In case this determination is made, the Tax Commissioner 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 address.

(b) The operator may within thirty (30) days after the personal serving or mailing of the notice make application in writing to the Tax Commissioner 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 Commissioner shall become final and conclusive and immediately due and payable.

(c) If the application is made, the Tax Commissioner shall give notice to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties.

(d) At the hearing, the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed.

(e) After the hearing, the Tax Commissioner shall determine the proper tax to be remitted and shall thereafter give written notice to the person of the determination and the amount of the tax, interest and penalty. The amount determined to be due shall be payable after thirty (30) days unless an appeal is taken as provided in Section 173.09. Subject to the policies laid down by the Board of Review, the Tax Commissioner shall have the power to compromise any assessment of interest and penalties.

(Ord. 86-89. Passed 9-11-86.)

173.09 APPEAL.

Any operator aggrieved by a decision of the Tax Commissioner with respect to the amount of tax, interest and penalties, if any, may appeal to the Board of Review in accordance with Section 171.13 of the Blue Ash Codified Ordinances.

(Ord. 86-89. Passed 9-11-86.)

173.10 RECORDS.

(a) It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve all records that may be necessary to determine the amount of the tax that he may have been liable for the collection of, and payment to, the City. 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 exempted by reason of such identity, or the nature of the transaction if exempted for any other reason.

(b) All such records and other documents shall be open during business hours to the inspection of the Tax Commissioner and shall be preserved for a period of four years, unless the Tax Commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept longer.

(c) In enforcement under this chapter the Tax Commissioner shall have all authority and power set forth in the enforcement of Chapter 171 of the Blue Ash Codified Ordinances.

(Ord. 86-89. Passed 9-11-86.)