

CHAPTER 185

Hotel-Motel Tax

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CROSS REFERENCES

Authority to levy - see Ohio R.C. 5737.08, 5737.09

185.01 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 of Finance" means the Director of Finance of the City of Mentor, Ohio.
- (c) "Hotel" or "Motel" 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 such rooms are in one or several structures.
- (d) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.
- (e) "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) "Operator" means the person who is the proprietor of the hotel or motel, whether in the capacity of owner, lessee, licensee, mortgagee in possession, 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 provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (g) "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 or motel 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 such room or suite of rooms for dwelling, lodging or sleeping purposes. (1969 Code 109.01)

185.02 RATE OF TAX.

For the purpose of providing revenue with which to meet the needs of the City of Mentor, Ohio, for the use of the general fund of the City, there is hereby levied a tax of three (3%) percentum on all rents received by a hotel or motel for lodging furnished to transient guests.

Said tax constitutes a debt owed by the transient guest to the City of Mentor, which is extinguished 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 or motel 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 guests ceasing to occupy space in the hotel or motel. If for any reason the tax due is not paid to the operator of the hotel or motel, the Director of Finance may require that such tax shall be paid directly to the Director of Finance. (1969 Code 109.02)

185.03 EXEMPTIONS.

No tax shall be imposed under this chapter:

- (a) Upon rents not within the taxing power of the City under the Constitution or laws of Ohio or the United States;
- (b) Upon rents paid by the State of Ohio or any of its political subdivisions.

No exemption claimed under the above paragraphs of this section shall be granted except upon claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Director of Finance. All claims of exemption shall be made in the manner prescribed by the Director of Finance.

(1969 Code 109.03)

185.04 PROHIBITION AGAINST 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.

If the transaction is claimed to be exempt, the transient guest must furnish to the operator, and the operator must 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. (1969 Code 109.04)

185.05 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 said 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 of Mentor, and the operator shall be liable for the collection thereof and for the tax.

No operator of a hotel or motel 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. (1969 Code 109.05)

185.06 REGISTRATION.

On or before July 1, 1978, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel or motel renting lodging to transient guests shall register said hotel or motel 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. Said certificate shall, among other things, state the following:

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

(1969 Code 109.06)

185.07 RECORDS, INSPECTION, DESTRUCTION.

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 furnished 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 open during business hours for inspection by the Director of Finance, or his agents, and shall be preserved for a period of four (4) years, unless the Director of Finance, in writing, consents to their destruction within that period, or by any order requesting that such records be kept for a longer period of time.

(1969 Code 109.07)

185.08 REPORTING AND REMITTING.

Each operator shall, on or before the last day of July, 1978 and on or before the last day of each month thereafter make and file a return for the preceding month, on forms prescribed by the Director of Finance, showing the receipts from furnishing lodging, the amount of tax due from the operator to the City for the period covered by the return, and such other information as the Director of Finance deems necessary for the proper administration of this chapter. The Director of Finance may extend the time for making and filing returns. Returns shall be filed by delivering or mailing the same to the Director of Finance together with payment of the full amount of tax shown to be due thereon.

The Director of Finance may authorize operators whose tax liability is not such to merit monthly returns, as determined by the Director of Finance upon the basis of administrative costs of the City, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed.

All claims for exemptions from tax filed by transient guests with the operator during the reporting period shall be filed with the return.

All returns and payments submitted by each operator shall be treated as confidential by the Director of Finance 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 Lake, or the City of Mentor, for official use only.

If for any reason, the hotel or motel shall cease doing business in the City of Mentor, all returns and payments are due immediately upon cessation of business.

All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City of Mentor until payment thereof is made to the Director of Finance.

The Director of Finance, if he deems it necessary in order to insure the payment of the tax imposed by this ordinance, may require returns and payments to be made for other than monthly periods. The returns shall be signed by the operator or his authorized agent.

(1969 Code 109.08)

185.09 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 (10%) percent of the amount of the tax, in addition to the tax.

(b) Continued Delinquency. Any operator who fails to remit any delinquent remittances 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 (10%) percent of the amount of the tax and previous penalty in addition to the tax and the ten (10) percent penalty first imposed. An additional penalty equal to ten (10%) percent 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 Director of Finance determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to twenty-five (25 %) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (a) and (b) of this section.

(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 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.

(1969 Code 109.09)

185.10 FAILURE TO COLLECT AND REPORT TAX, DETERMINATION OF TAX BY DIRECTOR OF FINANCE.

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the Director of Finance shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Director of Finance 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 of Finance shall give 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 (10) days after the serving or mailing of such notice make application in writing to the Director of Finance 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 of Finance shall become final and conclusive and immediately due and payable. If such application is made, the Director of Finance shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said 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 fixed. After such hearing, the Director of Finance 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 (15) days unless an appeal is taken as provided in Section 185.11.

(1969 Code 109.10)

185.11 APPEAL.

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 the City Manager by filing a notice of appeal with him within fifteen (15) days of the serving or mailing of the determination of tax due. The City Manager 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 City Manager 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.

(1969 Code 109.11)

185.12 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 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 of Mentor for the recovery of such amount.

(1969 Code 109.12)

185.13 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 City under this chapter, it may be refunded as provided in subsections (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director of Finance within three (3) years of the date of payment. The claim shall be on forms furnished by the Director of Finance.

(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 Director of Finance that the person from whom the tax has been collected was not a transient guest; provided, however, 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 guest or credited to rent subsequently payable by the transient to the operator.

(c) A transient guest may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing of a claim in the manner provided in subsection (a) hereof, but only when the tax was paid by the transient guest directly to the Director of Finance, or when the transient guest having paid the tax to the operator, establishes to the satisfaction of the Director of Finance that the transient guest 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 thereto by written records showing entitlement thereto.

(1969 Code 109.14)

185.14 MONIES RECEIVED; WHERE CREDITED.

The monies received under the provisions of this chapter shall be credited to the Community Recreation Facilities Fund of the City.

(1969 Code 109.16)

185.99 PENALTY.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor of the third degree and shall be fined not more than five hundred (\$500.00) dollars or imprisoned not more than sixty (60) days, or both. (1969 Code 109.13)

