

CHAPTER 193
Transient Occupancy Excise Tax

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CROSS REFERENCES

Authority to levy - see Ohio R. C. 5739.02(C), 5739.024
Posting hotel rates - see Ohio R. C. 3731.16

193.01 DEFINITIONS.

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

- (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) "Commissioner of Taxation" means the Tax Commissioner of the City as agent for the Treasurer in administering the Transient Occupancy Tax.
- (c) "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 or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. Such term shall include a motel if such establishment meets the definition of hotel as contained in this subsection (c).
- (d) "Transient guest" means persons occupying a room or rooms for sleeping accommodations for less than thirty 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 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 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, 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, rooms, space or portion/hereof, in any hotel for dwelling, lodging or sleeping purposes. The use or possession or right to use or possess, any room, any suite of connecting rooms as office space, banquet or private dining rooms, or any 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, loafing or sleeping purposes.
- (h) "City" means the City of Hamilton, Ohio.
- (i) "Board of Review" means the same Board of Review created and constituted under Section 191.13. (Ord. 84-12-108. Passed 12-27-84.)

193.02 RATE OF TAX.

(a) Commencing on April 9, 1993, there is hereby levied a tax of six percent (6%) on all rents received by a hotel for lodging furnished to transient guests, such tax to be known as the transient occupancy tax. The purpose of such tax shall be to provide revenue for general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, capital improvements by the City, and to provide revenue for the operating expenses of the Greater Hamilton Convention and Visitors Bureau, or a differently named nonprofit organization created and operated for the purpose of fostering travel and tourism in the City. (Ord. 93-3-22. Passed 3-10-93.)

(b) Such 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 Commissioner of Taxation may require that such tax shall be paid directly to the Commissioner of Taxation. (Ord. 84-12-108. Passed 1-27-84.)

193.03 EXEMPTIONS.

No tax shall be imposed under this chapter:

- (a) Upon any rents not within the taxing power of the City under the Constitution or laws of the State of Ohio or the United States of America;
- (b) Upon rents paid by the State or any of its political subdivisions;
- (c) Upon rents of two dollars (\$2.00) per day, or less.

No exemption claimed under subsections (a) or (b) 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 Commissioner of Taxation. All claims of exemption under subsection (c) hereof shall be made in the manner prescribed by the Commissioner of Taxation.

(Ord. 84-12-108. Passed 12-27-84.)

193.04 SEPARATELY STATED AND CHARGED.

(a) The transient occupancy tax to be collected shall be stated and charged separately from the rent 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, statement or charge made for such occupancy issued or delivered by the operator and the tax shall be paid by the transient guest 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 84-12-108. Passed 12-27-84.)

193.05 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 renting lodging to transient guests shall register such hotel with the Commissioner of Taxation 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 and business telephone number of the hotel;
- (c) The date upon which the certificate was issued;
- (d) The following statement:

"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 Commissioner of Taxation for the purpose of collecting from transient guests the Transient Occupancy Tax and remitting such tax to the Commissioner of Taxation. This certificate does not constitute a permit."

(Ord 84-12-108. Passed 12-27-84.)

193.06 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 Commissioner of Taxation, make a return to the Commissioner of Taxation, on forms obtainable from him, of the total rents charged and received and the amount of tax collected from transient guests. All claims for exemption from tax filed by transient guests 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 Commissioner of Taxation. The Commissioner may establish shorter reporting periods for any certificate holder if he deems 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 Commissioner. Such operator shall be liable for the payment of the tax required to be collected whether or not such tax has in fact been collected. All returns and payments submitted by each operator shall be treated as confidential by the Commissioner 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, Butler County or the City of Hamilton for official use only. The nonavailability or failure to obtain forms shall not relieve an operator from timely paying such 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 consecutive quarters within a twelve-month period, to file such returns when due or to pay the tax thereon, or if any operator authorized by the Commissioner of Taxation to file returns at less frequent intervals, fails on two or more occasions within a twenty-four month period, to file such returns when due or to pay the tax due thereon, the Commissioner may require such operator to furnish security in any amount equal to the average tax liability of the operator for a period of one year, as determined by the Commissioner from a review of returns or other information pertaining to such operator, which amount shall in no event be less than one hundred dollars (\$100.00). Such 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 Commissioner of Taxation conditioned upon payment of the tax due with the returns from the operator. Such security must be filed within ten days following the operator's receipt of the notice from the Commissioner of Taxation of its requirements. A corporate surety bond filed under this section shall be returned to the operator if, for a period of twelve 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 such 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 such 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 such liability may be collected by assessment in the manner provided in this chapter. (Ord. 84-12-108. Passed 12-27-84.)

193.07 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 pay 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 account remains delinquent.

(c) Fraud. If the Commissioner of Taxation 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 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 in Section 193.08 nor during the pendency of any appeal to the Commissioner of Taxation provided for in Section 193.09. (Ord. 84-12-108. Passed 12-27-84.)

193.08 FAILURE TO COLLECT AND REPORT TAX.

(a) If any operator shall fail or refuse to collect such tax and shall make, within the time provided in this chapter, any report and remittance of such tax, or any portion thereof required by this chapter, the Commissioner of Taxation 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 Commissioner 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 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 and addressed to the operator so assessed at his last known address.

(b) Such operator may within ten days after the serving or mailing of such notice make application in writing to the Commissioner of Taxation 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 Commissioner shall become final and conclusive and immediately due and payable. If such application is made, the Commissioner 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 Commissioner shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of the determination and the amount of such tax, interest and penalty. The amount determined to be due shall be payable after thirty days unless an appeal is taken as provided in Section 193.09. Subject to the policies promulgated by the Board of Review, the Commissioner shall have the power to compromise any assessment of interest and penalties. (Ord. 84-12-108. Passed 12-27-84.)

193.09 APPEAL.

Any operator aggrieved by any decision of the Commissioner of Taxation with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Review as created and constituted under Section 191.13 by filing a notice of appeal with the Board of Review within thirty days of the serving or mailing of the determination of tax due. The Board of Review shall fix a time and place for hearing such appeal, and shall give notice in writing to such operator at his last known resident address. The findings of the Board of Review 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. This is the same Board of Review created under Section 191.13. (Ord. 84-12-108. Passed 12-27-84.)

193.10 RECORDS.

(a) Every operator liable for the collection and payment to the City of any tax imposed by this chapter shall keep and preserve all records as may be necessary to determine the amount of such tax as 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 Commissioner of Taxation and shall be preserved for a period of four years, unless the Commissioner in writing, consents to their destruction within that period, or by order requires that they be kept longer. (Ord. 84-12-108. Passed 12-27-84.)

193.11 REFUNDS.

(a) Whenever the amount of any tax, interest or penalty has been overpaid, 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) hereof provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Commissioner of Taxation within three years of the date of payment he claim shall be on forms furnished by the Commissioner.

(b) An 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 Commissioner of Taxation 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 guest to the operator.

(c) A transient guest may obtain a refund of taxes overpaid, 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 Commissioner of Taxation, or when the transient guest having paid the tax to the operator, establishes to the satisfaction of the Commissioner 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 and such refund exceeds one dollar (\$1.00). (Ord. 84-12-108. Passed 12-27-84.)

193.12 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 for the recovery of such amount. (Ord. 84-12-108. Passed 12-27-84.)

193.13 DISTRIBUTION/CREDITING OF MONEYS RECEIVED.

The moneys received under the provisions of this chapter shall be distributed and credited as follows:

- (a) Effective September 1, 1996, sixty-seven percent (67%) of such receipts shall be given to the Greater Hamilton Convention and Visitors Bureau, and thirty-three percent (33%) shall be credited to the General Fund.
- (b) Effective January 1, 1997, eighty-three percent (83%) of such receipts shall be given to the Greater Hamilton Convention and Visitors Bureau, and seventeen percent (17%) shall be credited to the General Fund; and
- (c) Effective January 1, 1998, one hundred percent (100%) of such receipts shall be given to the Greater Hamilton Convention and Visitors Bureau, and no funds shall be credited to the General Fund.
(Ord. 96-9-106. Passed 9-25-96.)

193.99 PENALTY.

(a) Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the second degree, punishable therefor by a fine of not more than seven hundred fifty dollars (\$750.00) or by imprisonment for a period of not more than ninety days, or by both such fine and imprisonment for each offense.

(b) Any operator or other person who fails or refuses to register as required herein or to furnish any return required to be made, who fails or refuses to furnish a supplemental return or other data required by the Commissioner of Taxation, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor of the second degree and is punishable therefor by a fine of not more than seven hundred fifty dollars (\$750.00) or by imprisonment for a period of not more than ninety days, or by both such fine and imprisonment for each offense.

(c) Any person required to make, render, sign or verify any report or claim who makes a false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor of the second degree and is punishable therefor by a fine of not more than seven hundred fifty dollars (\$750.00) or by imprisonment for a period of not more than ninety days, or by both such fine and imprisonment for each offense. (Ord. 84-12-108. Passed 12-27-84.)

August 27, 2008

EMERGENCY ORDINANCE NO. EOR2008-8-106

AN ORDINANCE AMENDING AND SUPPLEMENTING THE CODIFIED ORDINANCES OF THE CITY OF HAMILTON, OHIO, BY ADDING THERETO NEW SUBSECTION 193.13(d), RELATIVE TO THE TRANSIENT OCCUPANCY EXCISE TAX. (Effective January 1, 2009)

WHEREAS, pursuant to Section 193.02 of the Codified Ordinances of the City of Hamilton, Ohio, a six percent (6%) tax is currently levied on all rents received by a hotel for lodging furnished to transient guests and the purpose of such tax is to provide revenue for general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, capital improvements by the City, and to provide revenue for the operating expenses of the Greater Hamilton Convention and Visitors Bureau, or a differently named nonprofit organization created and operated for the purpose of fostering travel and tourism in the City; and

WHEREAS, Section 193.13 of the City's Codified Ordinances, relative to the City's Transient Occupancy Excise Tax, currently states that one hundred percent (100%) of the moneys received from collection of the said Tax shall be distributed and credited to the Greater Hamilton Convention and Visitors Bureau, and no funds shall be credited to the City's General Fund; and

WHEREAS, Council desires that Section 193.13 of the City's Codified Ordinances be amended to require that fifty percent (50%) of such receipts be given to the Greater Hamilton Convention and Visitors Bureau, and fifty percent (50%) be credited to the General Fund; and

WHEREAS, the subject matter herein constitutes an emergency measure in that it provides for the immediate preservation of the public peace, property, health and safety of the citizens of the City by providing for the orderly and continuous operation of the City government and to help alleviate projected shortages in the City's General Fund;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Hamilton, Ohio:

SECTION I: That Section 193.13 of the Codified Ordinances of the City of Hamilton, Ohio, relative to soliciting, is hereby supplemented and amended by adding thereto new Subsection (d) to be and read as follows:

PART ONE – ADMINISTRATIVE CODE

TITLE NINE – Taxation

CHAPTER 193 – Transient Occupancy Excise Tax

Sec. 193.13 DISTRIBUTION/CREDITING OF MONEYS RECEIVED.

The moneys received under the provisions of this chapter shall be distributed and credited as follows:

(d) Effective January 1, 2009, fifty percent (50%) of such receipts shall be given to the Greater Hamilton Convention and Visitors Bureau, and fifty percent (50%) shall be credited to the General Fund.

SECTION II: This ordinance is hereby declared to be an emergency measure for the reasons set forth in the preamble hereto and shall take effect and be in full force from and after its passage.

PASSED: August 27, 2008

Donald V. Ryan
Mayor

Effective Date: Immediately

ATTEST: Toshia Thomas
Acting City Clerk

CERTIFICATE

I, Ina Allen, City Clerk of the City of Hamilton, Butler County, Ohio, hereby certify that the foregoing Emergency Ordinance No. EOR2008-8-106 was duly published as provided by Section 113.01 of the Codified Ordinances of the City of Hamilton, Ohio, by posting ten days after passage, a copy thereof in each fire station within the City for a period of ten days. POSTED: September 5, 2008

Ina Allen
Ina Allen, City Clerk
CITY OF HAMILTON, OHIO Acting Clerk