

ARTICLE II. TRANSIENT OCCUPANCY TAX

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Sec. 18-10A. Title.

10A.1 This article shall be known as the Uniform Transient Occupancy Tax Article of the County of Lake. (Ord. No. 467, § 1, 1965)

Sec. 18-11. Definitions.

11.1 Except where the content requires otherwise, the definitions given in this section govern the construction of this article:

(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, religious groups, or any other group or combination acting as a unit. (Ord. No. 467, § 2, 1965)

(b) (1) *Hotel* means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio, hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof. (Ord. No. 467, § 2, 1965)

(2) *Hotel* does not mean any of the following: Any hospital, sanitarium, medical clinic, convalescent home, rest home, home for aged people, foster home, or other similar facility operated for the care or treatment of human beings; any asylum, jail, prison, orphanage or other facility in which human beings are detained and housed under legal restraint; any housing owned or controlled by an educational institution and used exclusively to house students, faculty or other employees, and any fraternity or sorority house or similar facility occupied exclusively by students and employees of such educational institution, and officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by any organization having qualifications for exemption from property taxes under the laws of California; any housing owned by a governmental agency and used to house its employees or for governmental purposes; any camp as defined in the Labor Code or other housing furnished by an employer exclusively for employees; any private dwelling house or other individually- owned single-family dwelling unit rented only occasionally and incidentally to the normal occupancy by the owner or his family. (Ord. No. 467, § 2, 1965)

(3) The burden of establishing that the housing or facility is not a hotel as defined herein shall be upon the operator thereof, who shall file with the Tax Collector such information as the Tax Collector may require to establish and maintain such status. (Ord. No. 467, § 2, 1965)

(c) *Occupancy* means the use or possession, or the right to the use or possession of any room or rooms or other living space in any hotel or other lodging for dwelling, lodging or sleeping purposes. (Ord. No. 467, § 2, 1965; Ord. No. 2124, § 1, 12-8-92)

(d) *Transient* means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel or other lodging shall be deemed to be a transient until the period of 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. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this article may be considered. (Ord. No. 467, § 2, 1965; Ord. No. 2124, § 2, 12-8-92)

(e) *Rent* means the consideration charged, whether or not received, for the occupancy of space in a hotel or other lodging valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any

kind or nature, without any deduction therefrom whatsoever. (Ord. No. 467, § 2, 1965; Ord. No. 2124, § 3, 12-8-92)

(f) *Operator* means the person who is proprietor of the hotel, or other lodging whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her 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 article and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both. (Ord. No. 467, § 2, 1965; Ord. No. 2124, § 4, 12-8-92)

(g) (1) *Other Lodging* includes, but is not limited to, a camping site, a space at a campground, or a space at a recreational vehicle park.

(2) *Other Lodging* does not include a campsite in a state park or any facility operated by a local governmental entity.

(3) The burden of establishing that the facility or space is not 'other lodging' as defined herein shall be upon the operator thereof, who shall file with the Tax Collector such information as the Tax Collector may require to establish and maintain such status. (Ord. No. 2124, § 5, 12-8-92)

Sec. 18-12. Tax Imposed.

12.1 For the privilege of occupancy in any hotel or other lodging, each transient is subject to and shall pay a tax in the amount of nine (9) percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the operator or to the County. (Ord. No. 614, § 1, 1970; Ord. No. 972, § 1, 8-16-77; Ord. No. 2033, § 1, 8-27-91; Ord. No. 2124, § 6, 12-8-92)

12.2 The transient shall pay the tax to the operator of the hotel or other lodging 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's ceasing to occupy space in the hotel or other lodging. If for any reason the tax due is not paid to the operator of the hotel or other lodging the Tax Collector may require that such tax shall be paid directly to the Tax Collector. (Ord. No. 614, § 1, 1970; Ord. No. 2124, § 7, 12-8-92)

Sec. 18-13. Exemptions.

13.1 No tax shall be imposed upon any of the following:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose the tax herein provided. (Ord. No. 467, § 4, 1965)

(b) Any Federal, City, or State of California officer or employee when on official business. (Ord. No. 467, § 4, 1965)

(c) Any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty. (Ord. No. 467, § 4, 1965)

13.2 No exemption 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 Tax Collector. (Ord. No. 467, § 4, 1965)

Sec. 18-14. Duties of Operator.

14.1 Each operator shall collect the tax imposed by this article to the same extent and at the same time the rent is collected from every transient. (Ord. No. 467, § 5, 1965)

(a) The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. (Ord. No. 467, § 5, 1965)

14.2 No operator of a hotel or other lodging 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. No. 467, § 5, 1965; Ord. No. 2124, § 8, 12-8-92)

Sec. 18-15. Regulation.

15.1 Within thirty (30) days after the effective date of this article or within thirty (30) days after commencing business, whichever is later, each operator of any hotel or other lodging renting occupancy to transients shall register said hotel or other lodging with the Tax Collector and obtain from him or her a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. (Ord. No. 467, § 6, 1965; Ord. No. 2124, § 9, 12-8-92)

15.2 Said certificate shall, among other things, state the following:

(a) The name of the operator. (Ord. No. 467, § 6, 1965)

(b) The address of the hotel or other lodging. (Ord. No. 467, § 6, 1965; Ord. No. 467, § 6, 1965; Ord. No. 2124, § 10, 12-8-92)

(c) The date upon which the certificate was issued. (Ord. No. 467, § 6, 1965)

(d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Article by registering with the Tax Collector for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Collector. This certificate does not authorize any person to conduct any lawful business in an unlawful manner, nor 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 this County. This certificate does not constitute a permit." (Ord. No. 467, § 6, 1965; Ord. No. 2124, § 11, 12-8-92)

Sec. 18-16. Reporting and Remitting.

16.1 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 Collector, make a return to the Tax Collector on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. (Ord. No. 467, § 7, 1965)

(a) At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Collector. (Ord. No. 467, § 7, 1965)

16.2 The Tax Collector 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. (Ord. No. 467, § 7, 1965)

16.3 Returns and payments are due immediately upon cessation of business for any reason. (Ord. No. 467, § 7, 1965)

16.4 All taxes collected by operators pursuant to this article shall be held in trust for the account of the County until payment thereof is made to the Tax Collector. (Ord. No. 467, § 7, 1965)

Sec. 18-17. Penalties and Interest.

17.1 Original Delinquency:

(a) Any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax. (Ord. No. 467, § 8, 1965)

17.2 Continued Delinquency:

(a) 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 of ten (10) percent of the amount of the tax in addition to the amount of the tax and the ten (10) percent penalty first imposed. (Ord. No. 467, § 8, 1965)

17.3 If the Tax Collector determines that the non-payment of any remittance due under this article is due from fraud, a penalty of twenty-five (25) per cent of the amount of the tax shall be added thereto in addition to the penalties stated in provisions 17.1 and 17.2 of this section. (Ord. No. 467, § 8, 1965)

17.4 In addition to the penalties imposed, any operator who fails to remit any tax imposed by this article shall pay interest at the rate of one-half of one (1) per cent 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. (Ord. No. 467, § 8, 1965)

17.5 Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid. (Ord. No. 467, § 8, 1965)

Sec. 18-18. Failure to Collect and Report Tax.

18.1 If any operator shall fail or refuse to collect said tax and to make, within the time provided in this article, any report and remittance of said tax or any portion thereof required by this article, the Tax Collector 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. (Ord. No. 467, § 9, 1965)

18.2 As soon as the Tax Collector shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this article 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 article. (Ord. No. 467, § 9, 1965)

18.3 In case such determination is made, the Tax Collector 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 address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Tax Collector for a hearing on the amount assessed. (Ord. No. 467, § 9, 1965)

18.4 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 Collector shall become final and conclusive and immediately due and payable. (Ord. No. 467, § 9, 1965)

18.5 If such application is made, the Tax Collector 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. (Ord. No. 467, § 9, 1965)

18.6 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 Tax Collector 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 19. (Ord. No. 467, § 9, 1965)

Sec. 18-19. Appeal.

19.1 Any operator aggrieved by any decision of the Tax Collector with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the County Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. (Ord. No. 467, § 10, 1965)

19.2 The Board of Supervisors shall fix a time and place for hearing such appeal, and the County Clerk shall give notice in writing to such operator at his last known place of address. (Ord. No. 467, § 10, 1965)

19.3 The findings of the Board of Supervisors 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. (Ord. No. 467, § 10, 1965)

Sec. 18-20. Records.

20.1 It shall be the duty of every operator liable for the collection and payment to the County of any tax imposed by this article to keep and preserve, for a period of three years, 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 County, which records the Tax Collector shall have the right to inspect at all reasonable times. (Ord. No. 467, § 11, 1965)

20.2 All tax returns and information furnished by any operator pursuant to this article shall be confidential and shall not be open to public inspection nor the specific contents thereof disclosed by any officer or employee except as necessary in the performance of official duty pursuant to this article, or in the course of any proceedings, hearing or litigation involving the existence or amount of the tax liability of such operator, or with the written consent of the operator or his authorized representative. (Ord. No. 467, § 11, 1965)

Sec. 18-21. Refunds.

21.1 Whenever the amount of any tax, interest or penalty has been overpaid more than once or has been erroneously or illegally collected or received by the County under this article it may be refunded as provided in provisions 21.2 and 21.3 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 Tax Collector within three years of the date of payment. The claim shall be on forms furnished by the Tax Collector. (Ord. No. 467, § 12, 1965)

21.2 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 Tax Collector that the person from whom the tax has been collected was not a transient; 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 or credited to rent subsequently payable by the transient to the operator. (Ord. No. 467, § 12, 1965)

21.3 A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected, or received by the County by filing a claim in the manner provided in provision 21.1 of this section but only when the tax was paid by the transient directly to the Tax Collector, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Tax Collector that the transient has been unable to obtain a refund from the operator who collected the tax. (Ord. No. 467, § 12, 1965)

21.4 No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. (Ord. No. 467, § 12, 1965)

Sec. 18-22. Actions to Collect.

22.1 Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owed by the transient to the County. Any such tax collected by an operator which has not been paid to the County shall be deemed a debt owned by the operator to the County. (Ord. No. 467, § 13, 1965)

22.2 Any person owing money to the County under the provisions of this article shall be liable to an action brought in the name of the County of Lake for the recovery of such amount. (Ord. No. 467, § 13, 1965)

Sec. 18-23. Violations and Penalties.

23.1 Any person violating any of the provisions of this article 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. No. 467, § 14, 1965)

23.2 Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplement return or other data required by the Tax Collector, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. (Ord. No. 467, § 14, 1965)

23.3 Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article to be made, is guilty of a misdemeanor and is punishable as aforesaid. (Ord. No. 467, § 14, 1965)