

## **39. TRANSIENT ROOM TAX**

### **39.1 DEFINITIONS:**

For the purposes of this chapter except where the context requires otherwise:

**39.1.1** "Accrual accounting" means an accounting method whereby the operator enters the rent due from the transient on the records when the rent is earned, whether or not it is paid.

**39.1.2** "Board" means the Board of County Commissioners of Clatsop County, Oregon.

**39.1.3** "Cash Accounting" means an accounting method whereby the operator does not enter the rent due from the transient on the records until rent is paid.

**39.1.4** "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and including any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, condominium, public or private dormitory, fraternity, sorority, public or private club, and also means space in mobile home or trailer parks, campgrounds, RV parks or similar land structure or space or portions thereof so occupied, provided such occupancy is for less than a 30 day period.

**39.1.5** "Occupancy" means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any room, rooms, or space in a hotel as defined herein.

**39.1.6** "Operator" means the person who is proprietor of the hotel in any capacity. Where the operator performs functions through a managing agent of any type or character other than an employee, the managing agent shall also be considered an operator for the purposes of this ordinance and shall have the same duties and liabilities as the principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall be considered to be compliance by both.

**39.1.7** "Persons" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

**39.1.8** "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.

**39.1.9** "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 not a part of a package plan.

**39.1.10** "Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which the operator is required to report collections.

39.1.11 "Tax Administrator" means the person designated as such by separate order of the Board.

39.1.12 "Transient" means any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the 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 considered to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than 30 consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to January 1, 1991, may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in any month, shall not be considered a transient.

39.1.13 "Unincorporated Areas of Clatsop County" means all territory outside of the corporate limits of any city or town. (Ordinance 90-7, Sec. 2)

## **39.2 TAX IMPOSED:**

For the privilege of occupancy in any hotel in the unincorporated areas of Clatsop County, Oregon, on or after January 1, 1991, each transient shall pay a tax in the amount of 7% percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the County which is extinguished only by payment by the operator to the County. 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 or her records when rent is collected if the operator keeps records on the cash accounting basis, and when earned if the operator keeps 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. In all

cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities, other than the furnishings of rooms, accommodations and space occupancy in mobile home parks or trailer parks. (Ordinance 90-7, Sec. 3)

### **39.3 COLLECTION OF TAX BY OPERATOR:**

**39.3.1** Every operator renting rooms or space for lodging or sleeping purposes in this county, the occupancy of which is not exempted under the terms of this ordinance, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owing by the operator to the county.

**39.3.2** In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectibles.

**39.3.3** The tax administrator shall enforce the provisions of this ordinance. The Board of County Commissioners shall have the power to adopt rules not inconsistent with this ordinance as may be necessary to aid in enforcement.

**39.3.4** For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted. (Ordinance 90-7, Sec. 4)

**39.3.5** Beginning with October 1, 1991, the operator may withhold not more than five percent (5%) of the tax collected to cover the cost of the operator of collecting and remitting the tax. (Ordinance 90-7, Sec. 4, as amended by Ordinance 91-14, Sec. 2)

### **39.4 OPERATOR'S DUTIES:**

Each operator shall collect the tax imposed by this ordinance at the same time the rent is collected from each 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 ordinance. (Ordinance 90-7, Sec. 5)

### **39.5 EXEMPTIONS**

**39.5.1** Any occupant for more than 30 successive calendar days;

**39.5.2** Any person who pays for lodging on a monthly basis, irrespective of the number of days in any month;

**39.5.3** Any occupant whose rent is of a value of less than \$2.00 per day;  
or

**39.5.4** Any occupant of a facility operated completely by a public benefit corporation as defined in ORS 65.001; or

**39.5.5** Any occupant of a hospital, nursing home, convalescent home, home for the aged or public institution owned and operated by a unit of government; or

**39.5.6** (*Deleted by Ordinance 2004-02*)

## **39.6 REGISTRATION OF OPERATOR; CERTIFICATION OF AUTHORITY**

**39.6.1** Every person engaging or about to engage in business as an operator of a hotel in Clatsop County shall register with the tax administrator on a form provided by the administrator. Operators engaged in business on December 2, 1990, must register not later than December 17, 1990. Operators starting business after December 2, 1990 must register within 15 calendar days after commencing business.

**39.6.2** The privilege of registration after the date of imposition of the transient room tax ordinance shall not relieve any person from the obligation of payment or collection of tax regardless of registration.

**39.6.3** Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his or her place or places of business and such other information as the tax administrator may require to facilitate the collection of the tax. The registration shall be signed by the operator.

**39.6.4** 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, with a duplicate for each additional place of business of each registrant.

**39.6.5** Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon its sale or transfer.

**39.6.6** Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed there so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

**39.6.7** The 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; and
- 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 CLATSOP COUNTY, OREGON, by registration with the tax administrator for the purpose of collecting from transients the lodging tax imposed by said county 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 applicable local laws, including but not limited to those requiring a permit from any board, commission, department or office of Clatsop County. This certificate does not constitute a permit." (Ordinance 90-7, Sec. 7)

### **39.7 DUE DATE; RETURNS AND PAYMENTS:**

**39.7.1** The tax imposed by this ordinance shall be paid by the transient to the operator at the time that rent is paid. All taxes collected by any operator are due and payable to the tax administrator on a quarterly basis on the 15th day of the following month for the preceding three months, and are delinquent on the last day of the month in which they are due. The tax administrator shall notify each operator of the due and delinquent dates for the operator's return. The initial return under this ordinance may be for less than the three months preceding the due date; thereafter, returns shall be made for the applicable quarterly period.

**39.7.2** On or before the 15th day of the month following each quarter of collection, a return for the preceding quarter's tax 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 the tax.

**39.7.3** 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, the gross receipts of the operator for the period, an explanation in detail of any discrepancy between those amounts, and the amount of rents exempted by this ordinance, if any.

**39.7.4** 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 his or 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.

**39.7.5** For good cause, the tax administrator may extend, for a period not to exceed one month, the time for making any return or payment of tax. Any operator to whom an extension is granted shall pay interest at the rate of one and one-half 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, the interest shall become a part of the tax for computation of penalties described in Subsection 39.20.

**39.7.6** If the tax administrator considers it necessary in order to insure payment or facilitate collection by the county of the amount of taxes in any individual case, he may require returns and payment of the amount of taxes for other than quarterly periods. (Ordinance 90-7, Sec. 8)

### **39.8 TAX DEFICIENCY DETERMINATION:**

**39.8.1** If the tax administrator determines that the returns are incorrect, he 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 his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one, or more than one, period, and the amount so determined shall be due and payable immediately upon service of notice, after which the amount determined is delinquent. Penalties on deficiencies shall be applied under Section 39.20.

**39.8.2** In making a determination the tax administrator may off-set 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 underpayments. The interest on underpayments shall be computed under Section 39.20.

**39.8.3** The tax administrator shall give to the operator or occupant a written notice of his or her determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at his or her address as it appears on the records of the tax administrator. In case of service by mail or any notice required by this ordinance the service is complete at the time of deposit in the United States Post Office.

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

**39.8.5** Any determination shall become due and payable immediately upon receipt of notice and shall become final within 10 days after the tax administrator has given notice provided however, the operator may petition

redemption and refund if the petition is filed before the determination becomes final. (Ordinance 90-7, Sec. 9)

### **39.9 FRAUD; REFUSAL TO COLLECT; EVASION:**

If any operator shall fail or refuse to collect the tax or make, within the time provided in this ordinance, any report and remittance of the tax or any portion thereof required by this ordinance, or makes a fraudulent return or otherwise wilfully attempts to evade this ordinance, the tax administrator shall proceed in such a manner as he considers 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 ordinance from any operator who has failed or refused to collect it and to report and remit the tax, he shall proceed to determine and assess against the operator the tax, interest and penalties provided by this ordinance. If that determination is made, the tax administrator shall give notice in the manner provided in Section 39.8 of the amount assessed. The determination and notice shall be made and mailed within 3 years after discovery by the tax administrator of any fraud, intent to evade or failure or refusal to collect the tax, or failure to file a return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within 10 days after the tax administrator has given notice, provided however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final. (Ordinance 90-7, Sec. 10)

### **39.10 OPERATOR DELAY:**

If the tax administrator believes that the collections of any tax acquired to be collected and paid to the county will be jeopardized by delay or if any determination will be jeopardized by delay, he shall determine the amount of tax required to be collected, noting the fact upon the determination. The amount so determined shall be immediately due and payable, and the operator shall immediately pay the 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 the determination, if the petition is filed within 10 days from the date of service of notice by the tax administrator. (Ordinance 90-7, Sec. 11)

### **39.11 REDETERMINATIONS:**

**39.11.1** Any person against whom a determination is made under Section 39.8 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 39.8. If a petition for redetermination and refund is not filed within that time, the determination becomes final at the expiration of the allowable time.

**39.11.2** 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 requested in his or her petition, shall grant the person an oral hearing and shall give him 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.

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

**39.11.4** The order or decision of the tax administrator upon a petition for redetermination and refund becomes final 10 days after service upon the petitioner of notice, unless appeal of the order or decision is filed with the Board of County Commissioners within the 10 days after service of notice.

**39.11.5** No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provision of this ordinance. (Ordinance 90-7, Sec. 12)

#### **39.12 SECURITY FOR COLLECTION OF TAX:**

**39.12.1** The tax administrator, whenever he considers it necessary to insure compliance with this chapter, may require any operator 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 quarterly liability for the period for which he files returns, determined in such manner as the tax administrator considers proper or \$5,000, whichever is less. The amount of the security may be increased or decreased by the tax administrator subject to the limitations of this subsection.

**39.12.2** At any time within three years after any tax required to be collected becomes due and payable or at any time within three 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 county to collect the amount delinquent together with penalties and interest. (Ordinance 90-7, Sec. 13)

#### **39.13 RECORDS MAINTAINED BY OPERATOR; ADMINISTRATOR EXAMINATION:**

**39.13.1** Every operator shall keep guest records of room sales on accounting books and records of the room sales. All records shall be retained by the operator for a period of three years and six months after they come into being.

**39.13.2** The tax administrator, or any person authorized in writing by him, may examine, during normal working 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. (Ordinance 90-7, Sec. 14)

**39.14 CONFIDENTIAL CHARACTER OF INFORMATION; DISCLOSURE PROHIBITED:**

**39.14.1** It shall be unlawful for the tax administrator or any person having an administrative or clerical duty under the provisions of this ordinance to make known in any manner whatsoever 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.

**39.14.2** Nothing in Section 39.14.1 shall be construed to prevent:

A. The disclosure to, or examination of records and equipment to another Clatsop County official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this ordinance including the collection of taxes.

B. The disclosure, after the filing of written request to that effect, to the taxpayer himself, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested in information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, or penalties, provided however, that the County Counsel approves each disclosure and that the tax administrator may refuse to make any disclosures when, in his or her 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 County. (Ordinance 90-7, Sec. 15)

**39.15 APPEAL TO BOARD OF COUNTY COMMISSIONERS:**

Any person aggrieved by any decision of the tax administrator may appeal to the Board of County Commissioners by filing a notice of appeal with the tax administrator within 10 days of the serving or mailing of the notice of a decision made by the tax administrator. The tax administrator shall fix a time and place for hearing the appeal as prescribed by the Board of County Commissioners and shall give the appellant 10 days written notice of the time and place of hearing. (Ordinance 90-7, Sec. 16)

### **39.16 REFUNDS BY COUNTY TO OPERATOR:**

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 ordinance, it may be refunded, provided a verified claim in writing, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three 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 the operator, his or her administrator, executors or assignees. (Ordinance 90-7, Sec. 17)

### **39.17 REFUNDS BY COUNTY TO TRANSIENT:**

Whenever the tax required by this ordinance 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 to the transient, provided a verified claim in writing, stating the specific reason on which the claim is founded, is filed with the tax administrator within three years from the date of payment. (Ordinance 90-7, Sec. 18)

### **39.18 REFUNDS BY OPERATOR TO TENANT:**

Whenever the tax required by this ordinance has been collected by the operator and it is later determined that the tenant occupies the hotel for a period exceeding thirty days without interruption, the operator shall refund to the tenant the amount previously collected by the operator from that tenant as a transient. The operator shall account for the collection and refund to the tax administrator. If the operator has remitted the tax prior to refund or credit to the tenant he shall be entitled to a corresponding refund under Section 39.16. (Ordinance 90-7, Sec. 19)

### **39.19 DISTRIBUTION OF TAX PROCEEDS:**

The tax administrator shall deposit all revenues collected pursuant to this ordinance to the credit of the General Fund. (Ordinance 90-7, Sec. 20)

### **39.20 TAX PENALTIES AND INTEREST:**

**39.20.1** 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 ordinance prior to delinquency shall pay a penalty of 10% of the amount of the tax due in addition to the amount of the tax.

**39.20.2** Any operator who has not been granted an extension of time for remittance of tax due and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of 15% of the amount of the tax in addition to the 10% penalty first imposed.

**39.20.3** If the tax administrator determines that the nonpayment of any remittance due under this ordinance is due to fraud or intent to evade its provisions, a penalty of 25% of the amount of the tax shall be added to the penalties stated in subsections A and B of this section.

**39.20.4** In addition to the penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one and one-half percent (1-1/2%) 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.

**39.20.5** 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 required to be paid.

**39.20.6** Any operator who fails to remit the tax levied within the time required by this ordinance shall pay the penalties, provided however, the operator may petition the Board for waiver and refund of the penalty or any portion thereof, and the Board may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof. (Ordinance 90-7, Sec. 21)

### **39.21 LIENS:**

**39.21.1** The tax imposed by this ordinance together with the interest and penalties herein provided, which may be incurred when same became delinquent as set forth in this ordinance, shall be and, until paid,

remain a lien against any and all real and personal property belonging to the hotel and used within Clatsop County, and may be foreclosed upon and sold as necessary to discharge said lien. Notice of lien may be issued by the tax administrator or his or her deputy whenever the operator is in default in the payment of said tax, interest and penalty and shall be recorded with the county clerk 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 at public auction after 10 days notice, which shall mean one publication in a newspaper of general circulation published within Clatsop County.

**39.21.2** Any liens 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 county 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. (Ordinance 90-7, Sec. 22)

**39.22 (This section repealed by Ordinance 96-15)**

**39.23 ATTORNEY FEES AND COSTS:**

In any action to enforce the provisions of this ordinance or to collect any tax, penalty or interest or to foreclose any lien the County shall be entitled to collect its attorney fees and costs, including but not limited to litigation reports, accountant fees, witness fees, filing fees, service fees, publication fees and mailing expenses, from the operator. Such fees and expenses shall be a lien against the real and personal property of the operator as provided in Section 39.21. (Ordinance 90-7, Sec. 24)