

CHAPTER 4

LODGING OCCUPANCY PRIVILEGE TAXES

SECTION

- 5-401. Definitions.
- 5-402. Tax levied and exemptions.
- 5-403. Collection.
- 5-404. Taxes remitted to City Recorder.
- 5-405. Method of reporting taxes.
- 5-406. Offer to absorb tax prohibited.
- 5-407. Penalties and interest for delinquent payment.
- 5-408. Tax records.
- 5-409. Administration.
- 5-410. Disposition of tax proceeds.
- 5-411. Tax is additional tax.
- 5-412. Rules and regulations.
- 5-413. Severability.

5-401. Definitions. As used in this chapter unless the context otherwise requires:

(1) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.

(2) "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 camp, tourist court, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.

(3) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings or accommodations in any hotel.

(4) "Operator" means the person operating the hotel whether as owner, lessee or otherwise.

(5) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(6) "Religious institutions" shall have the same meaning as that established by Tennessee Code Annotated § 48-3-502(b).

(7) "Tourism" means the planning and conducting of programs of information and publicity designed to attract to the municipality tourists, visitors, and other interested persons from outside the area and also encouraging and coordinating the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the area for the same purpose.

(8) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days. (1996 Code, § 5-401)

5-402. Tax levied and exemptions. There is hereby levied, assessed and imposed and shall be paid and collected, a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount equal to two percent (2%) of the consideration charged by the operator. Such tax is a privilege tax upon the transient occupying such room and is to be collected as provided by this chapter.

Those persons acting as representatives of, engaged in duties in conjunction with, and acting under the auspices of those organizations having a valid certificate of exemption issued by the Commissioner of the Tennessee Department of Revenue as provided for in Tennessee Code Annotated § 67-6-322(a)(1) and those religious institutions which have received a determination of exemption from the Internal Revenue Service under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) and are currently operating under it, are exempt from the provisions of this chapter provided that proof of the existence of such certification of exemption or determination of exemption is presented to the operator prior to the submittal of the invoice to the transient for payment. A copy of such proof shall be submitted to the municipality as part of the required monthly tax return. (1996 Code, § 5-402, as amended by Ord. #2012-008, July 2012, and Ord. #2013-13, June 2013)

5-403. Collection. Such tax shall be added by each operator to each invoice prepared by the operator for the occupancy in his hotel and be given directly or transmitted to the transient and shall be collected by such operator from the transient and remitted to the municipality. For the purpose of compensating the operator in accounting for remitting the tax levied pursuant to this chapter, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the City in the form of a deduction in submitting his or her return and paying the amount due by such operator, provided the amount was not delinquent at the time of payment.

When a person has maintained occupancy for thirty (30) continuous days, he shall receive from the operator a refund or credit for the tax previously collected from or charged to him, and the operator shall receive credit for the amount of such tax if previously paid or reported to this municipality. (1996 Code, § 5-403)

5-404. Taxes remitted to City Recorder. The tax hereby levied shall be remitted by all operators who lease, rent or charge for occupancy within a hotel in the municipality to the City Recorder of the City of Sevierville, such tax to be remitted to such officer no later than the twentieth (20th) day of each month for the preceding month. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for such occupancy whether prior to occupancy or after occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the municipality for such tax shall be that of the operator. (1996 Code, § 5-404)

5-405. Method of reporting taxes. The City Recorder shall be responsible for the collection of such tax. A monthly tax return under oath shall be filed with the City Recorder by the operator with such number of copies thereof as the City Recorder may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the City Recorder and approved by the Board of Mayor and Aldermen prior to use. The City Recorder shall audit each operator in the municipality at least once per year and shall report on the audits made on a quarterly basis to the Board. (1996 Code, § 5-405)

5-406. Offer to absorb tax prohibited. 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. (1996 Code, § 5-406)

5-407. Penalties and interest for delinquent payment. Taxes collected by an operator which are not remitted to the City Recorder on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and in addition, a penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax. Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is declared to be unlawful and shall be punishable upon conviction by a fine not in excess of fifty dollars (\$50.00). (1996 Code, § 5-407)

5-408. Tax records. It shall be the duty of every operator liable for the collection and payment to the municipality of the tax imposed by this chapter to keep and preserve for a period of three (3) 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 this municipality, which records the City

Recorder shall have the right to inspect at all reasonable times. (1996 Code, § 5-408)

5-409. Administration. The City Recorder who is administering and enforcing the provisions of this chapter shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Tennessee Code Annotated, title 67 or otherwise provided by law for the county clerks.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in Tennessee Code Annotated, title 67, it being the intent of this chapter that the provisions of law which apply to the recovery of state taxes illegally assessed and collected shall also apply to the tax levied under the authority of this chapter. The City Recorder shall also possess those powers and duties as provided in said section for county clerks with respect to the adjustment and settlement with taxpayers all errors of taxes collected by him under authority of this chapter and to direct the refunding of same. Notice of any tax paid under protest shall be given to the City Recorder and any suit may be brought for recovery of such tax paid under protest by filing the same against the City Recorder of the City. (1996 Code, § 5-409, modified)

5-410. Disposition of tax proceeds. The proceeds from the tax levied herein shall be retained by the City and distributed as follows:

(1) Two-thirds (2/3) of the proceeds shall be used for the promotion of tourism, including but not limited to funding of the Chamber of Commerce of Sevierville, Tennessee.

(2) One-third (1/3) of the proceeds shall be deposited in the general fund of the City. (1996 Code, § 5-410)

5-411. Tax is additional tax. The tax herein levied shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied. (1996 Code, § 5-411)

5-412. Rules and regulations. The City Recorder shall have the power to make and publish reasonable rules and regulations not inconsistent with this chapter or other laws for the enforcement of the provisions of this chapter and the collection of revenues hereunder. Further, the City Recorder shall design, prepare, print and make available to all persons who are subject to this chapter all necessary forms for filing returns, and instructions to insure full compliance with the provisions of this chapter. (1996 Code, § 5-412)

5-413. Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter and to that end the provisions of this chapter are declared severable. (1996 Code, § 5-413)