

ARTICLE 5. UNIFORM TRANSIENT OCCUPANCY TAX

Sec. G-V 5.1 Authority; Title

Article 5 of Chapter V of the General Code of Nevada County shall be titled the "Uniform Transient Occupancy Tax." The provisions of Article 5 are adopted pursuant to, and consistent with, Cal. Revenue and Taxation Code Sections 7280, et seq. (Ord. #2184.)

Sec. G-V 5.2 Definitions

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

- 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. LODGING FACILITY means any space or shelter or structure, or any portion of any space or shelter or structure which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes, but is not limited to, any hotel, inn, condominium, house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, non-exempt campground, or other similar space or shelter or structure, or portion thereof, as provided for pursuant to Cal. Revenue & Taxation Code Section 7280, or as that Section may be amended. "Lodging facility" shall not include an "organized camp" as defined in Health & Safety Code Section 18897(a). (Ord. #2184.)
- C. OCCUPANCY means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.
- 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 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 ordinance may be considered.
- E. RENT means the consideration charged, whether or not received for the occupancy of space in a hotel 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.

- F. OPERATOR means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, 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 ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall, however, be considered to be compliance by both.
- G. TAX ADMINISTRATOR means the Revenue and Collections Officer of the Nevada County Collections Division.

Sec. G-V 5.3 Tax Imposed

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten percent (10%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the County which is extinguished only by payment to the operator or to the County. The transient 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 transients' ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator. (Ord. #1672, 10/16/90)

Sec. G-V 5.4 Exemptions

No tax shall be imposed upon:

- A. Any federal or State of California officer or employee when on official business;
- B. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

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 Administrator.

Sec. G-V 5.5 Operator's Duties

Each operator shall collect the tax imposed by this ordinance to the same extent and at the same time as the rent is collected from every transient. 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. 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.

Sec. G-V 5.6 Annual Registration Certificate

In order that the County will have an accurate record of parties collecting transient occupancy tax, each hotel operator will be required to register as hereinafter provided.

- A. Prior to commencing business and annually thereafter during the month of January of each year, each operator of any hotel renting occupancy to transients shall register such hotel with the Tax Administrator and obtain from him an Annual Registration Certificate to be at all times posted in a conspicuous place on the premises. Registration shall be on a calendar year basis, i.e., from January 1 through December 31, or balance of calendar year in the instance of a mid-year registration. Such Annual Registration Certificate shall, among other things, state the following:
 - 1. Name and address of the hotel.
 - 2. Name of the operator.
 - 3. Name and address of owners.
 - 4. Registration Certificate number and date issued.
- B. Failure to register prior to commencement of business, or failure to re-register in the month of January in any year of continued operation, as above provided, shall be a misdemeanor.
- C. The Registration Certificate shall not be transferable, and shall be returned to the Tax Administrator upon sale of property or cessation of business along with the final remittance of transient taxes due.
- D. The operator named on the face of this Registration Certificate shall be responsible to collect from transients the transient occupancy tax and remitting such 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, 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 in this County.
- E. Notwithstanding the provisions of Section G-V 5.6(a), the Tax Administrator may waive the registration requirement for any year where the operator has filed its initial registration during the last six calendar months of the immediately preceding year.

Sec. G-V 5.7 Reporting and Remitting

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 Administrator, make a return to the Tax Administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator 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. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this ordinance shall be held in trust for the account of the County until payment thereof is made to the Tax Administrator.

Sec. G-V 5.8 Penalties and Interest

- A. ORIGINAL DELINQUENCY. Any operator who fails to collect and remit any tax imposed by this ordinance within the time required shall pay a penalty of 10% of the amount of the tax in addition to the amount of the tax.
- B. CONTINUED DELINQUENCY. 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 10% of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed.
- C. FRAUD. If the Tax Administrator determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of 25% 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 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 on the unpaid balance of the tax, including penalties, from the date on which the remittance first became delinquent until paid.
- E. PENALTIES MERGED WITH TAX. 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.

Sec. G-V 5.9 Failure to Collect and Report Tax. Determination of Tax by Tax Administrator

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this ordinance, any report and remittance of said tax or any portion thereof required by this ordinance, the Tax Administrator 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 Tax Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this ordinance 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 ordinance. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or 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 twenty (20) days after the serving or mailing of such notice

make application in writing to the Tax Administrator 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 Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than fifteen (15) 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 so fixed. After such hearing the Tax Administrator 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 G-V 5.10.

Sec. G-V 5.10 Appeal

Any operator aggrieved by any decision of the Tax Administrator 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 Clerk of the Board of supervisors within fifteen (15) days of the serving or mailing of the determination of tax due. The Board of Supervisors shall fix a time and place for hearing such appeal, and the Clerk of the Board of Supervisors shall give not less than fifteen (15) days written notice to such operator at his last known place of address. 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.

Sec. G-V 5.11 Records to be Retained

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 five years, all records that may be necessary to determine the amount of such tax as he may have been liable for the collection of and payments to the County under this ordinance. As a minimum, the records deemed necessary for this determination shall be a chronological cash journal showing tax and room rates separately, or other comparable means of summarizing the operator's monthly or quarterly revenue, supported by room registrations, which may, with reasonable effort, be identified with the revenue summary. These records shall be available, at all reasonable times, for inspection by the County Tax Collector or Auditor-Controller. Performance of an audit does not waive the County's right to any tax or the five-year requirement of preserving records.

Sec. G-V 5.12 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 county under this ordinance, it may be refunded as provided in subparagraphs (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 Tax Administrator within three years of the date of payment. The claim shall be on forms provided by the Tax Administrator.
- 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 Tax Administrator 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.
- C. 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 subparagraph (a) of this section, but only when the tax was paid by the transient directly to the Tax Administrator, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient 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.

Sec. G-V 5.13 Actions to Collect

Any tax required to be paid under the provisions of this Article shall be deemed a debt owed by the operator who was responsible for the collection and remittance thereof. 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 Nevada for the recovery of such tax and subsequent penalties. (Ord. #2204.)

Sec. G-V 5.13.1 Tax Lien

- A. The Tax Administrator is authorized to record a Certificate of Delinquency of Transient Occupancy Tax Lien with the Nevada County Clerk-Recorder against an operator who fails to remit taxes, penalties, or interest due under this Article within the times required herein. The Certificate of Delinquency of Transient Occupancy Tax Lien may be filed by the Tax Administrator:
 - 1. Twenty (20) days after the serving or mailing of the notice required by Section G-V 5.9, if the operator does not file the application for a hearing permitted to be filed by Section G-V 5.9.

2. If the operator files the application permitted to be filed by Section G-V 5.9, twenty (20) days after the Tax Administrator's determination of the amount of tax to be remitted pursuant to Section G-V 5.9, unless the operator files an appeal pursuant to Section G-V 5.10.
3. If the operator files an appeal pursuant to Section G-V 5.10, twenty (20) days after service of the Board of Supervisor's findings pursuant to Section G-V 5.10.

The Certificate of Delinquency of Transient Occupancy Tax Lien shall be filed within three (3) years after the tax becomes due. The Certificate of Delinquency of Transient Occupancy Tax Lien shall specify the amount of tax and penalties due, the name and last known address of the operator liable for the same, and a statement that the Tax Administrator has complied with all provisions of this Article with respect to the computation and levy of the tax owed by the operator. From the time of the recording of the Certificate of Delinquency of Transient Occupancy Tax Lien, the amount required to be paid, together with penalties, constitutes a lien upon all real property in the County owned by the operator or thereafter acquired before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from the filing of the Certificate of Delinquency of Transient Occupancy Tax Lien, unless sooner released or otherwise discharged. Within ten (10) years of the date of the recording of the Certificate of Delinquency of Transient Occupancy Tax Lien (or within ten (10) years of the date of the last extension of the lien), the Tax Administrator may extend the lien by filing for record a new certificate in the office of the Nevada County Clerk-Recorder, and, from the time of filing, the lien under the original Certificate of Delinquency of Transient Occupancy Tax Lien shall be extended for an additional ten (10) years, unless sooner released or otherwise discharged. The lien shall not be removed until the delinquent taxes, penalties for delinquency, and costs of collection are fully paid or the property is sold for payment of the delinquent taxes, penalties for delinquency, and costs of collection.

- B. At any time within three (3) years after the recording of a Certificate of Delinquency of Transient Occupancy Tax Lien under Subsection (A) above, the Tax Administrator may issue a warrant directed to any sheriff for the enforcement of the lien and the collection of any tax and penalties required to be paid the County under this Article. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The Tax Administrator may pay or advance to the sheriff such fees, commission, and expenses for services as are provided by law for similar services pursuant to a writ of execution.
- C. In lieu of issuing a warrant under Subsection (B), at any time within the three (3) years after a Certificate of Delinquency of Transient Occupancy Tax Lien was recorded under Subsection (A), the Tax Administrator may collect the delinquent

amount by seizing, or causing to be seized, any property, real or personal, of the operator and sell any non-cash or non-negotiable property, or a sufficient part of it, at public auction to pay the amount of tax due, together with any penalties, interest, and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure. (Ord. #2204.)

Sec. G-V 5.14 Violations; Misdemeanor

Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor and shall be punishable therefore by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment.

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 supplemental return or other data required by the Tax Administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. 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 ordinance to be made, is guilty of a misdemeanor and is punishable as aforesaid.

Sec. G-V 5.15 Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

Sec. G-V 5.16 Publication of Revenues and Operators

Repealed by Ord. 2329, 10/26/10.

Ord. #269, 10/16/62; Ord. #310, 1/4/65; Ord. #324, 9/1/65; Ord. #417, 10/29/68; Ord. #1189, 10/24/83; Ord. #1198, 12/5/83; Ord. #1672, 10/16/90; Ord. #2184, 7/12/05; Ord. #2204, 5/23/06; Ord. #2329, 10/26/10.