

CHAPTER 3.12TRANSIENT OCCUPANCY TAX3.12.010 Taxable Event.

A. For the privilege of occupancy in any hotel, each transient shall pay a tax in the amount of eight percent (8%) of the rent charged by the operator. In addition, each hotel guest shall pay an additional tax of 2% of the rent charged by the hotel operator which shall be used only for beach sand replenishment and stabilization projects. The transient satisfies this tax obligation by paying the tax to the operator. (Ord. 98-28)

B. The tax is payable at the time that rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The balance of the tax shall be due upon the transient's ceasing occupancy in the hotel.

C. If sufficient funds are not paid to the operator by the transient to pay the tax in full, the tax administrator may commence an action against the transient to recover the amount of the tax. (Ord. 86-22)

3.12.020 Exemptions. No tax under this Chapter shall be imposed upon:

A. Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax herein provided.

B. Any federal or State of California officer or employee when on official business.

C. 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 therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

3.12.030 Definitions. For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Hotel. 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, including any hotel, inn, tourist home or house, short term rental, 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 or other. (Ord. 2008-04)

Occupancy. The use or possession or the right to the use or possession of any room or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

Operator. 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 or 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.

Rent. 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.

Transient. 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; provided, that any person who actually occupies the same premises for a period of thirty-one (31) or more consecutive days shall be deemed exempt from the tax imposed by this Chapter on that specific occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this Chapter may be considered.

3.12.040 Collection of Tax.

A. It shall be unlawful for an operator to fail to collect from the transient the tax imposed by this Chapter at the same time as the rent is collected from the transient.

B. The operator shall deliver to the transient a receipt for payment which states the amount of the tax separately from the amount of the rent charged.

C. No operator 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 the tax will not be added to the rent, or that, if added, any part will be refunded except in a manner provided in this Chapter.

3.12.050 Registration. Within 30 days after commencing business, each operator of any hotel renting occupancy to transients shall register such hotel with the Director of Finance and obtain from the Director a "Transient Occupancy Registration Certificate" which certificate shall 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 of the hotel.
- C. The date upon which the certificate is issued.

D. "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 tax administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Director of Finance. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in any 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 City. This certificate does not constitute a permit."

3.12.060 Obligation of Operator.

A. If the operator receives any consideration for allowing the transient to occupy the hotel, the value of such consideration shall be first applied by the operator to satisfy the tax owed. It shall be unlawful for the operator to fail to hold the tax collected by the operator in trust for the benefit of the City. It shall be unlawful for the operator to fail to remit the collected tax to the City in accordance with the provisions of this Chapter.

B. On or before the last day of each month, or if determined appropriate by the Director of Finance, the last day of the month following the close of each calendar quarter, the operator shall file a return with the tax administrator, on a form approved by the City, setting forth for the previous month or quarter (if appropriate): (Ord. 2008-24)

- 1. The total rents charged;
- 2. The total rents received;
- 3. The amount of tax funds held by the operator;
- 4. An explanation if the amount of Item 3 is less than eight percent (8%) of the amount of Item 1.

C. The tax funds collected for the previous month/quarter shall be remitted together with the return for that reporting period. (Ord. 2008-24)

D. The operator shall comply with shorter reporting and payment periods if imposed by the tax administrator in order to facilitate the collection of this tax.

E. If the operator ceases business, it shall be unlawful for the operator to fail to file immediately with the City the return and tax funds for the previous month/reporting period and the return and tax funds for the period of the current reporting period in which the operator ceased business. (Ord. 2008-24)

3.12.070 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 of ten percent (10%) of the amount of 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 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the ten percent (10%) first imposed.

C. Fraud. If the Director of Finance determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of tax shall be added thereto, in addition to the penalties stated in subsections 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 Chapter shall pay interest at the rate of one-half of one percent (0.5%) 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 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.

3.12.080 Records and Inspection. It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this Chapter 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 City, which records the Director of Finance shall have the right to inspect at all reasonable times.

3.12.090 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 City under this chapter, it may be refunded as provided in subsections B and C of this section; provided, that a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, shall be filed with the Director of Finance within three years of the date of payment. The claim shall be on forms furnished by the Director of Finance.

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 Director of Finance that the person from whom the tax has been collected was not a transient; provided, 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 City by filing a claim in the manner provided in subsection 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 Director of Finance 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.