

CHAPTER 185
Hotel Excise Tax

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CROSS REFERENCES
Income tax - see ADM. Ch. 181

185.01 DEFINITIONS.

As used in this chapter:

- (a) "Hotel" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests, and are used for the accommodation of such guests, whether such rooms are in one or several structures. (Ord. 65-2010. Passed 12-6-10.)
- (b) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.
- (c) "Vendor" means the person who is the owner or operator of the hotel and who furnishes the lodging.
(Ord. 73-89. Passed 9-18-89.)

185.02 IMPOSITION OF TAX.

(a) For the purpose of providing revenue with which to meet the needs of the City for the use of the general revenue fund of the City, an excise tax is hereby levied on transactions by which lodging by a hotel is or is to be furnished to transient guests.
(Ord. 73-89. Passed 9-18-89.)

(b) The tax is three percent (3%) of the amount paid or to be paid by the transient guest for the lodging. The tax applies and is collectible at the time the lodging is furnished regardless of the time when the price is paid.
(Ord. 65-2010. Passed 12-6-10.)

(c) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all lodging furnished by hotels in this City to transient guests is subject to the tax until the contrary is established.
(Ord. 73-89. Passed 9-18-89.)

185.03 TRANSIENT GUEST TO PAY TAX.

The tax imposed by this chapter shall be paid by the transient guest to the vendor, and each vendor shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging.
(Ord. 65-2010. Passed 12-6-10.)

185.04 REFUND OF ILLEGAL OR ERRONEOUS PAYMENTS.

The City Auditor shall refund to vendors the amount of taxes paid illegally or erroneously or paid on any illegal or erroneous assessment where the vendor has not reimbursed himself from the transient guest. When such illegal or erroneous payment or assessment was not paid to a vendor but was paid by the transient guest directly to the City Auditor, or his agent, he shall refund to the transient guest. Applications shall be filed with the Auditor, on the form prescribed by him, within ninety days from the date it is ascertained that the assessment or payment was illegal or erroneous; provided, however, that in any event such application for refund must be filed with the Auditor within four years from the date of the illegal or erroneous payment of the tax. On filing of such application the Auditor shall determine the amount of refund due and certify such amount of refund. The Auditor shall draw a warrant for such certified amount to the person claiming such refund. The Auditor shall make such payments from a tax refund as established by ordinance.
(Ord. 73-89. Passed 9-18-89.)

185.05 RECORDS.

Each vendor shall keep complete and accurate records of lodging furnished, together with a record of the tax collected thereon, which shall be the amount due under this chapter, and shall keep all invoices, and such other pertinent documents. If the vendor furnishes lodging not subject to the tax the vendor's records shall show the identity of the transient guest, if the sale was exempted by reason of such identity, or the nature of the transaction if exempted for any other reason. Such records and other documents shall be open during business hours to the inspection of the City Auditor or his agent, and shall be preserved for a period of four years, unless the Auditor, in writing, consents to their destruction within that period, or by order requires that they be kept longer.
(Ord. 73-89. Passed 9-18-89.)

185.06 RETURNS REQUIRED.

(a) Each vendor shall, on or before the last day of October, 1989, and before the 28th day of each month immediately following thereafter, make and file a return for the preceding month, on forms prescribed by the Auditor, showing the receipts from furnishing lodging, the amount of tax due from the vendor to the City for the period covered by the return and such other information as the Auditor deems necessary for the proper administration of this chapter. If the 28th falls on a holiday or weekend, that tax is due on the last business day preceding the 28th. The Auditor may extend the time for making or filing returns.
(Ord. 65-2010. Passed 12-6-10.)

(b) Returns shall be filed by mailing the same to the City Auditor, together with payment of the amount of tax shown to be due thereon.
(Ord. 73-89. Passed 9-18-89.)

(c) The Auditor may authorize vendors whose tax liability is not such as to merit monthly returns, as determined by the Auditor upon the basis of administration costs to the City, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed.

(d) The Auditor shall stamp or otherwise mark on all returns the date received by him and shall also show thereon by stamp or otherwise the amount of payment received with the return. Any vendor who fails to file a return under this chapter shall, for each day he so fails, forfeit and pay into the City the sum of the five dollar (\$5.00).

(e) The Auditor, if he deems it necessary in order to insure the payment of the tax imposed by this chapter, may require returns and payments to be made for other than monthly periods. The returns shall be signed by the vendor or his authorized agent.
(Ord. 65-2010. Passed 12-6-10.)

**185.07 LIABILITY OF HOTEL AND TRANSIENT GUEST; ASSESSMENT;
PETITION FOR REASSESSMENT; PENALTIES.**

(a) If any vendor collects the tax imposed by or pursuant to this chapter and fails to remit the same to the City as prescribed, he shall be personally liable for any amount collected which he failed to remit. The Auditor may make an assessment against such vendor based upon any information in the Auditor's possession.

(b) If any vendor fails to collect the tax or any transient guest fails to pay the tax imposed by or pursuant to this chapter on any transaction subject to the tax, such vendor or transient guest shall be personally liable for the amount of the tax applicable to the transaction. The Auditor may make an assessment against either the vendor or transient guest, as the facts may require, based upon any information in his possession.

(c) An assessment against a vendor in cases where the tax imposed by or pursuant to this chapter has not been collected or paid, shall not discharge the transient guest's liability to reimburse the vendor for the tax applicable to such transaction.

(d) In each case the Auditor shall give to the vendor or transient guest assessed written notice of such assessment. Such notice may be served upon the vendor or transient guest assessed personally or by registered or certified mail. An assessment issued against either, pursuant to the provisions of this chapter shall not be considered an election or remedies, nor a bar to an assessment against the other for the tax applicable to the same transaction, provided that no assessment shall be issued against any vendor or transient guest for the tax due on a particular transaction if such tax has actually been paid by another.

(e) The Auditor may make an assessment against any vendor who fails to file a return required by this chapter or fails to remit the proper amount of tax in accordance with this chapter. When information in the possession of the Auditor indicates that the amount required to be collected is, or should be, greater than the amount remitted by the vendor, the Auditor may upon the basis of test checks of a vendor's business for a representative period which are hereby authorized, determine the ratio which the tax required to be collected under this chapter bears to the hotel's lodging, which determination shall be the basis of an assessment as herein provided in this chapter. Notice of such assessment shall be made in the manner prescribed in this chapter.

(f) Unless the vendor or transient guest, to whom such notice of assessment is directed, files within thirty days after service thereof, either personally or by registered or certified mail a petition in writing, verified under oath by such vendor, transient guest or his authorized agent, having knowledge of the facts, setting forth with particularity the items of such assessment objected to, together with the reasons for such objections, such assessment shall become conclusive and the amount thereof shall be due and payable, from the vendor or transient guest so assessed, to the City Auditor. When a petition for reassessment is filed, the Auditor shall assign a time and place for the hearing of same and shall notify the petitioner thereof by registered or certified mail, but the Auditor may continue the hearings from time to time if necessary.

(g) A penalty of fifteen percent (15%) shall be added to the amount of every assessment made under this chapter. The Auditor may adopt and promulgate rules and regulations providing for the remission of penalties added to assessments made under this chapter.

(h) When any vendor or transient guest files a petition for reassessment as provided in this chapter, the assessment made by the Auditor, together with penalties thereon, shall become due and payable within three days after notice of the finding made at the hearing has been served, either personally or by registered or certified mail, upon the party assessed.
(Ord. 73-89. Passed 9-18-89.)

**185.08 FOUR-YEAR LIMITATION FOR ASSESSMENTS;
EXCEPTIONS.**

No assessment shall be made or issued against a vendor or transient guest for any tax imposed by or pursuant to this chapter more than four years after the return date for the period in which the lodging was furnished, or more than four years after the return for such period is filed, whichever is later. The division does not bar an assessment:

- (a) When the Auditor has substantial evidence of amounts of taxes collected by a vendor from transient guests' lodging which were not returned by the City.
 - (b) When the vendor assessed failed to file a return as required.
- (Ord. 73-89. Passed 9-18-89.)

185.09 TAX PAID BY TRANSIENT GUEST; FALSE EVIDENCE OF TAX-EXEMPT STATUS.

(a) No transient guest shall refuse to pay the full and exact tax as required by this chapter, or present to the vendor false evidence indicating that the lodging as furnished is not subject to the tax.

(b) No vendor shall fail to collect the full and exact tax as required by this chapter. No vendor shall refund, remit or rebate to a transient guest, either directly or indirectly, any of the tax levied pursuant to this chapter, or make in any form of advertising, verbal or otherwise, any statements which might imply that he is absorbing the tax for the transient guest by an adjustment of prices, or furnishing lodging at a price including the tax, or rebating the tax in any other manner.

(Ord. 73-89. Passed 9-18-89.)

185.10 REPORTS TO BE FILED; FRAUDULENT REPORTS.

(a) No person, including any officer of a corporation or employee of a corporation having control or supervision of or charged with the responsibility of filing returns, shall fail to file any return or report required to be filed by this chapter or file or cause to be filed any incomplete, false or fraudulent return, report or statement, or aid or abet another in the filing of any false or fraudulent return, report or statement. (Ord. 73-89. Passed 9-18-89.)

(b) If any vendor required to file monthly returns under this chapter fails, on three consecutive months or more within a twelve-month period, to file such returns when due or to pay the tax thereon, or if any vendor authorized by the Auditor to file returns at less frequent intervals, fails on two or more occasions within a twelve month period, to file such returns when due or to pay the tax due thereon, the Auditor may:

(Ord. 65-2010. Passed 12-6-10.)

- (1) Require such vendor to furnish security in an amount equal to the average tax liability of the vendor for a period of one year, as determined by the Auditor from a review of returns or other information pertaining to such vendor, which amount shall in no event be less than one hundred dollars (\$100.00). The security may be in the form of an advance tax payment to be applied to pay the tax due on subsequent returns, or a corporate surety bond, satisfactory to the Auditor, conditioned upon payment of the tax due with the returns from the vendor. The security must be filed within ten days following the vendor's receipt of the notice from the Auditor of its requirements.
- (2) A corporate surety bond filed under this section shall be returned to the vendor if, for a period of twelve consecutive months following the date the bond was filed, the vendor has filed all returns and remitted payment therewith within the time prescribed in this chapter.

(Ord. 73-89. Passed 9-18-89.)

185.11 PERSONAL LIABILITY OF CORPORATE OFFICERS OR EMPLOYEES.

If any vendor corporation required to file returns and to remit the tax due to the City under the provisions of this chapter fails for any reason to make such filing or payment, any of its officers or employees having control or supervision of or charged with the responsibility of filing returns and making payments, shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or remit tax due. The sum due for such liability may be collected by assessment in the manner provided in this chapter.

(Ord. 73-89. Passed 9-18-89.)

185.12 INTENT OF CHAPTER.

It is the intent of this chapter to levy the excise tax of three percent (3%) on transactions by which lodging by a hotel is or is to be furnished to transient guests as referred to and authorized by Division (C) of Ohio R.C. 5739.02. Accordingly, this chapter shall be construed to effectuate that purpose and so as to be consistent with any requirement of law, compliance with which is a prerequisite to the validity of the tax intended to be levied hereby.

(Ord. 73-89. Passed 9-18-89.)

185.99 PENALTY.

Whoever violates any section of this chapter shall be fined not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) for the first offense. For each subsequent offense such person shall, if a corporation, be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or if an individual, or a member of a partnership, firm or association, be fined not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00), or imprisoned not more than sixty days, or both.

(Ord. 73-89. Passed 9-18-89.)