

MONTGOMERY COUNTY HOTEL LODGING EXCISE TAX

CODE OF REGULATIONS

Sec. 1 Title.

This Code of Regulations shall be known and may be cited and referred to as the “Montgomery County Hotel Lodging Excise Regulations”, or “Hotel Excise Tax Code of Regulations: to the same effect.

Sec. 2 Definitions.

As used in the following Sections of the Montgomery County Hotel Excise Tax Code of Regulations:

(A) “Board” means the Board of the County Commissioners of Montgomery County.

(B) “Administrator” means the County Administrator and any of his assistants designated to assist in administering and enforcing the collection of the hotel lodging excise tax herein levied and imposed, who are hereby assigned all of the duties and authority of the Board to administer and enforce the collection of such tax, including the power to administer oaths, as provided by ORC Section 302.30.

(C) “Person” means individuals, partnerships, corporations, receivers, assignees, trustees in bankruptcy, estates, firms, associations, joint ventures, clubs, societies, and combinations of the foregoing in any form.

(D) “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, in which five (5) or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

(E) “Transient guests(s)” means person(s) occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.

(F) “Lodging” means one (1) or two (2) or more connecting rooms in which sleeping accommodations are provided for a transient guest(s).

(G) “Vendor” means a person who is required to have an Ohio Retail Sales Tax Vendor License and to operate a business pursuant to ORC Section 5739.17, and who operates a hotel which furnishes lodging to guests and includes the agents and employees of such person who perform the functions of the vendor on his behalf. “Vendor” also includes the owner, lessee, mortgagor in possession, of the real estate upon whose

premises the vendor operates or has operated a hotel, when the vendor is or becomes a non-resident of Ohio or conceals his whereabouts or his property.

(H) "Premises" means a parcel or contiguous parcels of real property upon which a hotel is operated.

(I) "Consumer" means the person, whether or not a guest, who pays or is obligated to pay the rent for the lodging of transient guest(s) in a hotel.

(J) "Rents" means the aggregate value in money or anything paid or delivered, or promised to be paid or delivered for hotel lodging, without any deduction for the cost of labor, service, property used, interest discounts paid or allowed after the price is paid or agreed to be paid, or any other expense. "Rent" does not include: (1) Amounts refunded for lodging not used when the full rent and tax are refunded by cash or credit; nor (2) cash contracted to be furnished.

(K) "Tax" means, unless otherwise specified, the tax levied and imposed hereby.

Sec. 3 Levy of tax; when collectable; exemptions; presumption.

(A) An excise tax is hereby levied and imposed upon each transaction in Montgomery County by which lodging is or is to be furnished by a vendor to a transient guest or guests, at the rate of three (3)% percent of the rent for each such transaction, on and after June 1, 1980.

(B) The tax applies and is collectable when the lodging is furnished, regardless of the time when the rent is paid or delivered.

(C) For the purpose of the proper administration, and to prevent evasion, of the tax, it is presumed that all rents for hotel rooms in the County are subject to the tax until the contrary is established.

(D) The tax is not a part of the rent and shall be separately stated as such on every rent invoice, bill, statement or other written charge therefore

Sec. 4 Liabilities of vendor and consumer; certificate of exemption.

(A) The tax is imposed upon and shall be paid by the consumer to the vendor as trustee solely for the benefit of Montgomery County, and each vendor as such trustee shall collect from the consumer the full and exact amount of the tax payable on each taxable transaction in the manner and at the times provided as follows:

(1) If the price is, at or prior to the transaction, paid in cash, check, draft or money order by the consumer to the vendor, the vendor shall collect the tax with and at the same time as the price.

(2) If the price is otherwise paid or to be paid, the vendor shall, at or prior to the furnishing of lodgings, charge the tax to the account of the consumer, which amount shall be collected by the vendor from the consumer in addition to the price.

(B) Each such transaction shall be reported on, and the amount of the tax applicable thereto shall be remitted with, the return for the period in which the transaction occurs and the amount of the tax shall become a legal charge in favor of the vendor and against the consumer.

(C) To the extent the vendor fails to collect the tax from the consumer upon each taxable transaction or, having collected the tax, fails to return and remit the same when due, the tax is hereby imposed and levied upon the vendor. This paragraph does not affect any duty of a vendor nor the liability of any consumer to pay the tax, both as imposed upon each hereunder; but any payment of tax by the vendor or the consumer reduces the liability of the other to the County to the extent of the payment.

(D) If any transaction is claimed to be exempt from the tax, the consumer must furnish to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the transaction is not legally subject to the tax. If no certificate is furnished or obtained within the period for filing the return for the period in which such transaction is reportable, it shall be presumed that the tax applies.

The failure to have so furnished, or to have so obtained, a certificate shall not prevent a vendor or consumer from establishing that the transaction is not subject to the tax within sixty (60) days of the giving of notice by the Administrator of his intention to levy an assessment, in which event the tax shall not apply. Certificates need not be obtained nor furnished where the identity of the consumer is such that the transaction is never subject to the tax imposed. The certificate shall be in a form as established by Montgomery County.

Sec. 5 Return; when due; remission of penalties; procedure thereon; failure to file; form:

(A) Each vendor shall, on or before the last day of June, 1980 and on or before the last day of each month following, make and file a full and complete return in quadruplicate with the Auditor for the preceding calendar month as required on the form prescribed, showing all the information required thereon, including the amount of tax required to be collected from the consumer and the amount of tax due from the vendor to the County.

(B) Upon application of the vendor, in writing and for good cause shown, the Administrator may extend the time for making and filing returns and may remit any part of the penalties which may be due hereunder.

(C) Such return shall be submitted in duplicate to the Auditor together with the payment of the amount of tax shown to be due thereon plus penalty and interest.

(D) Upon receiving the same, the Auditor shall promptly stamp or otherwise mark on all copies the date received and the amount of payment received and shall immediately transmit one copy so stamped or marked and the payment received to the County Treasurer and to the Administrator.

(E) Any vendor who fails to file a complete return as required hereby shall, for each day he so fails, forfeit and pay into the County Treasury the sum of five (\$5.00) dollars as revenue arising from the tax, and such may be collected by assessment in the manner provided herein.

(F) The form of the return shall be prescribed by the Administrator.

Sec. 6 Assessment; liabilities of vendor and consumer.

(A) If any vendor collects the tax and fails to remit the same to the County as provided herein he shall be personally liable for any amount collected which he failed to remit; or if the tax on any transaction subject thereto, such vendor or consumer shall be personally liable for the same, and the first case, or the vendor or consumer in the second case, as the facts may require, based upon any information in his possession.

(B) An assessment against a vendor shall not discharge the consumer's liability to reimburse the vendor for the tax if the latter has not paid the tax.

(C) An assessment issued against either the vendor or the consumer shall not be considered an election of 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 person for the tax due on a particular transaction if the tax has been paid by another.

Sec. 7 Maintenance and inspection of records; assessments.

(A) The burden of proof rests upon each vendor to show what part, if any, of his gross receipts from hotel room rents are not taxable, and for such purpose each vendor shall maintain and keep complete and accurate records of rents, together with a record of the tax collected thereon, which shall include:

(1) Primary records such as all guest or rent registers, rent invoices, statements or bill, rent payments and/or refunds thereon, room rate sheets or cards of prices per day of each room as required by ORC Section 3731.16, receipts of income tax returns, Ohio sales tax returns and tax returns to local subdivisions having a hotel lodging excise tax identical or substantially similar to the tax imposed hereby, as filed by the vendor, exemption certificates, tax payment receipts, cash register tapes and all other pertinent documents; and

(2) Secondary records such as bank deposits receipts and day books, journals, or any other records in which accumulated data by the vendor, which must be supported by complete detailed records from which such data was accumulated.

(B) Guest or rent invoices, statements or bills and cash register tapes for taxable rents must have the total taxable rent and the tax charged and/or collected separately stated thereon, which amounts are to be accumulated and recorded in a secondary record.

(C) Rent invoices, statements or bills must also clearly show the length of stay, in terms of consecutive days, for each guest.

(D) All such records must be preserved for a period of four (4) years unless the Administrator consents, in writing, to their destruction within that period, or by order requires that they be kept for a longer period; provided, however, that any such records need no longer be preserved after an assessment for additional tax has been made and paid, with all penalties and interest thereon, for the period involved in such assessment, but a copy of such paid assessment shall be maintained for four (4) years following the period included in such assessment.

(E) All such records and documents shall be open during regular business hours to inspection of the Administrator who shall review, investigate, examine and audit any of such records of any vendor from time to time to determine if the proper tax has been returned and remitted. In connection with such investigation, he may interview the vendor, his agents and employees and take written statements therefrom under oath pursuant to the power conferred upon the Board of County Commissioners by ORC Section 305.21. If his investigation of such complete records reveals that any tax or additional tax shall make an assessment of such tax or additional tax in the manner provided in paragraph (G) hereof, *infra*, provided that if the Administrator is satisfied that the failure to return said tax or additional tax when due was caused by unintentional or immaterial error, mistake or omission, he shall not impose the penalty.

(F) If any vendor fails to maintain complete primary sales records, accurately reflecting the total rents subject to the tax and of the tax due thereon, or which may be utilized in verifying the accuracy of the figures reflected in his secondary records and/or reported on his tax returns filed hereunder, the Administrator will use one of the following methods for such verification:

(1) Determine the total amount of all rents, less rental refunds when the full tax has also been refunded either in information in his possession.

(2) Determine taxable and non-taxable rents, or the ratio of taxable rents to total rents, or both, as the facts may require, based upon any information in his possession.

The above described determinations may be based upon a sampling or test checks of the vendor's business activity for a representative period, or other information

relating to the rental of rooms made by such vendor. The Administrator may make the same determination where the facts in his possession reasonably lead him to believe that the amount of tax required to be collected is or should be greater than the amount remitted by the vendor.

(G) If any vendor:

- (1) Fails to maintain complete records, as required hereby; or
- (2) Fails or refuses to permit the Administrator to inspect any records; or
- (3) Refuses to permit the Administrator to sample or test check his business activity; or
- (4) Having filed a return or returns, misrepresents or fails to disclose, any material fact or figure thereon; or
- (5) Having collected the tax, fails to remit the same when due; or
- (6) Fails to remit the correct amount of tax or interest thereon when due; or
- (7) Fails to file a full and complete return when due: the Administrator shall determine the proper amount of tax by any of the means set forth herein above; the tax as so determined will be deemed to be the tax collected by such vendor during the entire period of time under review; and the Administrator shall make an assessment of such amount of tax based upon such determination, less the tax paid during such period, if any, (a) plus interest thereon at the rate of six (6%) percent per annum, computed from the time the amounts of tax assessed should have been paid; (b) plus a penalty of fifteen (15%) percent of the amount of the assessment of tax.

(H) No assessment, however, shall be made or issued against a vendor or consumer for any tax more than four (4) years after the return day for the period in which the taxable transaction giving rise to the assessment of the tax occurred, or after the return for said period was filed, whichever is later.

(I) All returns, documents and payments submitted by each vendor, all records and other documents examined and all information or knowledge of any vendor's business obtained by the Administrator, shall be treated as confidential by the Administrator and the Board and shall not be released by them except upon order of a court of competent jurisdiction or to a duly authorized officer or agent of the Federal government, the State of Ohio or any municipal corporation or township in Montgomery County which levies a tax pursuant to ORC Section 5739.024(B).

Sec. 8 Procedure following assessment; appeals.

(A) Each assessment shall be in writing stating clearly the reasons and basis therefore, upon forms adopted by the Administrator.

(B) In each case of an assessment, the Administrator shall give to the assessee written notice thereof to be served personally or by certified mail, return receipt requested, along with a copy of the written assessment.

(C) Unless the assessee, within thirty (30) days after service thereof, files with the Administrator a petition of reassessment in writing addressed to the Board and verified under oath by the assessee or his duly authorized agent having knowledge of the facts, and setting forth with particularity the items of assessment objected to, together with the reasons for such objection, the assessment shall become final and the amount thereof shall be deemed a debt due and payable to the County, whereupon the Administrator shall cause to be filed a civil action in the name of the Board for judgment in the amount of the assessment objected to, together with the reasons for such objection, the assessment shall become final and the amount thereof shall be deemed a debt due and payable to the County, whereupon the Administrator shall cause to be filed a civil action in the name of the Board for judgment in the amount of the assessment, including penalties and interest added thereto under the provisions hereof.

(D) When a petition for reassessment is timely filed, the Board shall assign a time and place for hearing the same and shall notify the petitioner thereof by certified mail. Notice of the decision of the Board upon the petition after hearing shall be serviced upon the petitioner by certified mail and deposited in the United States mail on the date of the entry of the decision in its journal.

(E) If aggrieved by the decision of the Board, the petitioner may appeal to the Court of Common Pleas pursuant to ORC Section 307.56.

(F) When the merits of the assessment or any part thereof is finally adjudicated, the Administrator shall proceed to collect the same as in paragraph (C) hereof upon the failure of a petition for reassessment.

(G) All monies collected upon assessments including penalties and interest thereon shall, when received by the County, be considered as revenue arising from the tax.

Sec. 9 Liability of officers and agents.

If any person, other than an individual, required to file returns and to remit the tax, fails for any reason to make such filing or payment, its officers, partners or managing agents, or employees having control or supervision of, or charged with the responsibility of, filing returns and making payments of tax, shall be personally liable for such failure. The dissolution of such entity shall not discharge its liability for a failure to file returns or remit tax due prior to such dissolution. Such liability may be collected by assessment in the manner provided in this Resolution.

Sec. 10 Sale of entire business; successor liable for taxes and penalties due.

If a vendor liable for the tax sells his business or quits his business, the taxes, interest and penalties imposed hereby on taxable rents made prior to that time shall become due and payable immediately, and such person shall make a final return within fifteen (15) days after the date of selling or quitting business. His successor shall withhold a sufficient amount of the purchase money to cover the amount of such taxes, interest, and penalties due and unpaid until the former owner produces a receipt from the Administrator showing that the taxes, interest and penalties have been paid, or a certificate indicating that no taxes are due. If the purchaser of the business fails to withhold purchase money, he shall be personally liable for the payment of the taxes, interest, and penalties occurred and unpaid during the operation of the business by the former owner.

Sec. 11 Refund of taxes illegally or erroneously paid.

A written claim for refund of taxes illegally or erroneously paid (or paid on an illegal or erroneous assessment where the vendor has not reimbursed himself from the consumer) may be filed in writing with the Administrator by a vendor within ninety (90) days from the date claimant ascertains that the payment was illegal or erroneous, but not later than four (4) years from the date of such payment.

Such claim must show that the tax was remitted to the County and that if it was collected from a consumer; the claimant has either reimbursed himself from the consumer or will hold such refund in trust for the benefit of the consumer.

The Administrator shall promptly determine the amount of the refund due (adding thereto interest at six (6%) percent per annum from the date of the overpayment) and whether an unpaid liability for tax against the claimant for the payment of tax currently exists, in which case, such refund, if allowed, plus interest, or to the extent allowed, shall be applied against such current liability to the full extent of the latter. The Administrator shall certify the excess amount of refund allowed or the full amount, as the case may be, to the County Auditor who shall draw his warrant for such certified amount on the County Treasurer in favor of the claimant. The County Treasurer shall pay such amount from any monies to the credit of the appropriate hotel lodging excise tax account of the County Undivided General Tax Fund.

If, however, the Administrator's decision on a claim for refund is to award less than the full amount claimed, his decision shall be treated in the same manner as an assessment under Section 8 hereof and the aggrieved claimant and the County shall have all the rights, remedies and duties as set forth in said Section 8 as upon an assessment; but the Administrator shall withhold his certification until the merits of the claim have been finally adjudicated.

Sec. 12 Examples.

The following examples are published to illustrate, for the benefit of the public, the application of the tax in the specific situations:

(A) If a person engages or reserves, and pays for, hotel room(s) for thirty (30) consecutive days or more for specified guest(s), the tax does not apply notwithstanding that such guest(s) may, in fact, occupy the room(s) for less than thirty (30) consecutive days, such guest(s) having the right to occupy said room(s) for the longer period.

(B) If an example A the room(s) are vacated in less than thirty (30) days, the tax applies.

(C) If a person engages or reserves hotel room(s) for less than thirty (30) days for specified guest(s) and during or at the end of the engagement or reservation period extends the engagement of room(s), whether the same or different room(s), for thirty (30) days or more, without interruption of occupancy or the right to occupancy, the tax does not apply.

(D) If a person engages or reserves hotel room(s) for more than thirty (30) consecutive days for guest(s) who nevertheless, may not, in fact, have the right to occupy the room(s) for thirty (30) or more consecutive days, the tax applies.

(E) If a guest occupies one room for less than thirty (30) days both for lodging and business purposes, the tax applies.

(F) If, in example E, such a guest occupies a suite of, or two (2) or more connecting rooms, the tax applies to the suite or all of the connecting rooms unless each connecting room, or separate room comprising the suite, is regularly assigned a rate for lodging and rented for separate lodging, in which case the tax applies only to the rent for the rooms so occupied for lodging, not to those occupied for other purposes.

(G) If lodging is provided without any compensation therefore and for whatever reason and without any compensating charge whatsoever in the regular rates of all other lodgings in the hotel, the tax does not apply to such complementary lodging.

(H) Vouchers contained in voucher books, thrift books and coupon books, which entitle the purchaser of the books to trade at different retail establishments shall be treated as money when applied to pay for lodging and the tax shall attach to all rents paid by the use of such vouchers, using as a tax basis the money value of the coupon or voucher.

(I) If lodgings are rented one (1) or more times in any twenty-four hour period to different guest(s) or consumer(s), the tax applies to each rental.

Sec. 13 Capability of vendor's equipment; bracket tax; vendor's responsibility for full amount of tax levied.

(A) Vendors having calculator or computer equipment with a capability to record no more than one tax may utilize that capability to record the Montgomery County Hotel Lodging Tax separately from the Ohio sales tax and any similar tax levied by a local subdivision, notwithstanding an identical designation for each tax charge is employed and shown on each rent invoice, bill, statement or other written charge. However, when the vendor upgrades or replaces his calculator or computer equipment, the same shall have the capability to separately charge and designate each separate tax imposed.

(B) Notwithstanding any provision contained in this Code of Regulations, or the Resolution adopting the same, to the contrary, each vendor is permitted to collect the tax in accordance with the collection schedule set forth in Section (C), below, which schedule parallels, for the convenience of each vendor, the combined brackets for the Ohio and voted Montgomery County bracketed sales tax as provided by law; provided, however, that the Montgomery County Hotel Lodging Excise Tax shall be stated on each rent invoice, bill, statement or other written charge therefore, separately and apart from the Ohio sales tax and any similar tax imposed by a local subdivision; and provided further, that each vendor shall report for each calendar quarter the total taxable rents collected during each quarter and pay the tax equal to three (3%) percent of such total taxable rents.

Sec. III

(A) All receipts collected from the excise tax levied hereby shall be deposited in the County General Fund and credited to the Hotel Lodging Excise Tax account.

(B) Commencing February 10, 1984, and thereafter on the tenth day (or if the tenth day is not a regular business day, then the first business day following such day) of each month, the County Auditor shall credit the County General Fund with an amount certified by the County Auditor as the real and actual cost of administrator of the Hotel Lodging Excise Tax during the previous calendar month.

(C) Receipts from interest earned on monies held in the accounts mentioned in sub-paragraphs (A) and (B), above, shall accrue to, and remain in, the County General Fund, as and for compensation for the cost of administration of such tax by the County Auditor and County Treasurer.

(D) After the allocations provided in sub-paragraphs (B) and (C) above, the balance remaining in the Hotel Lodging Excise Tax account shall, upon certification by the County Auditor that tax collections for the previous calendar month have been closed, be forthwith paid to, and such funds are hereby appropriated as required by law to the use of The Dayton and Montgomery County Convention and Visitors Bureau, a department of The Dayton Area Chamber of Commerce, Inc., an Ohio non-profit corporation.

(E) A claim for refund for taxes illegally or erroneously collected or paid, certified by the County Administrator to the County Auditor and for which his warrant is drawn on the County Treasurer, shall be paid for the balance set aside for payment of

refunds from the account for the territory in which such taxes were collected or paid. If such balance is inadequate to pay all or any part of any such refund, it shall be paid from current receipts from the hotel lodging excise tax credited to such account. If such current receipts are inadequate to pay all or any part of any such refund, it shall be paid from current receipts from the hotel lodging excise tax credited to such account. If such current receipts are inadequate to pay all or any part, as the case may be, of such warrant, such part remaining to be paid from any monies in the County Undivided General Fund not otherwise appropriated, which Fund shall be promptly reimbursed from the first receipts of taxes allocable to such account from which the refund should have been paid in full.

(F) Before publishing their annual fiscal year report, the County Auditor and the County Treasurer shall reconcile the allocation for the previous fiscal year of all actual costs of administration of the Hotel Lodging Excise Tax by the Board of County Commissioners, all receipts from the collection and assessment of tax and all refunds of tax, with the actual distribution of the proceeds thereof as provided herein, so that the allocation of the receipts is in accord with the formula of allocation set forth in paragraph (D) hereof.