

## Chapter 5.136 TRANSIENT OCCUPANCY TAX

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### 5.136.010 Definitions.

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

(a) Person. Except as used in subsection (d) hereof, "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) Hotel. "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 home or 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, or other similar structure or portion thereof. "Hotel" does not mean any of the following: Any hospital, sanitarium, medical clinic, convalescent home, rest home, home for aged people, foster home, or other similar facility operated for the care or treatment of human beings; any asylum, jail, prison, orphanage or other facility in which human beings are detained and housed under legal restraint; any housing owned or controlled by any educational institution and used exclusively to house students, faculty or other employees, and any fraternity or sorority house or similar facility occupied exclusively by students and employees of such educational institution, and officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by any organization having qualifications, for exemption from property taxes under the laws of California; any housing owned by a governmental agency and used to house its employees or for governmental purposes; any camp as defined in the Labor Code or other housing furnished by an employer exclusively for employees.

(c) Occupancy. "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. "Transient" means any individual who exercises occupancy or is entitled to occupancy of a specific room 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 individual 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 providing for a longer period of occupancy of the room. In determining whether an individual is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered.

(e) Rent. "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. "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 chapter by either the principal or the managing agent shall, however, be considered to be compliance by both. (Prior code § 6000; Ord. 1786, 08/25/66; Ord. 1904, 06/18/68; Ord. 2541, 11/14/78)

#### 5.136.020 Tax imposed.

For the privilege of occupancy in any hotel, effective October 2, 1990, 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 due upon the transients ceasing to occupy space in the hotel. (Prior code § 6001; Ord. 1786, 08/25/66; Ord. 2146, 05/16/72; Ord. 2500, 05/02/78; Ord. 2513, 06/20/78; Ord. 3268, 10/02/90)

#### 5.136.030 Exemptions.

No tax shall be imposed upon:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose this tax, provided: employees of the state or federal government are exempt only if their rooms are booked and room charges paid directly by their employing agencies.

(b) Any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.

(c) Occupancy of rooms by officers or employees of a legal entity which has a written lease for rooms at a hotel for at least one year and which leased rooms are not available to the general public at any time during the leased period, provided that, for each hotel, this exemption shall apply to not more than 10% of the total rooms in the hotel. This exemption shall apply after 30 days of occupancy.

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 collector. (Prior code § 6002; Ord. 1786, 08/25/66; Ord. 2282, 12/03/74; Ord. 2874, 01/24/84; Ord. 3556, 03/29/94)

#### 5.136.040 Operator's duties.

Each operator shall collect the tax imposed by this chapter 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. (Prior code § 6003; Ord. 1786, 08/25/66)

#### 5.136.050 Registration.

Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Collector and obtain from him a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

(1) The name of the operator;

- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;
- (4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of this chapter by registering with the Tax Collector for the purpose of collecting from transients the tax provided in this chapter and remitting said tax to the Tax Collector. 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 of this County. This certificate does not constitute a permit." (Prior code § 6004; Ord. 1786, 08/25/66)

#### 5.136.060 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 Collector, make a return to the Tax Collector, on forms provided by him, of the total rents charged and receivable and the amount of tax collectible for transient occupancies. At the time the return is filed, the full amount of the tax collectible shall be remitted to the Tax Collector. The Tax Collector 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 chapter shall be held in trust for the account of the County until payment thereof is made to the Tax Collector. (Prior code § 6005; Ord. 1786, 08/25/66)

#### 5.136.070 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 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 Ten Percent (10%) of the amount of the tax in addition to the amount of the tax and the Ten Percent (10%) penalty first imposed.
- (c) Fraud. If the Tax Collector determines that the nonpayment of any remittance due under this chapter is due to fraud of the operator, a penalty of Twenty-Five Percent (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 chapter shall pay interest at the rate of one percent (1%) 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. Interest shall be imposed on penalties from thirty (30) days after an operator is notified of a delinquency.

(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.

(f) Penalties imposed by this section are in addition to any other penalties provided for in other sections of this code. (Prior code § 6006; Ord. 1786, 08/25/66; Ord. 1904, 06/18/68); Ord. 2541, 11/14/78)

#### 5.136.080 Failure to collect and report tax. Determination of tax by tax collector.

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the Tax Collector 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 Collector shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter 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 chapter. In case such determination is made, the Tax Collector shall give a notice of the amount so assessed serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Tax Collector 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 Collector shall become final and conclusive and immediately due and payable. If such application is made, the Tax Collector shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at 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 Collector 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 5.136.090. (Prior code § 6007; Ord. 1786, 08/25/66)

#### 5.136.090 Appeal.

Any operator aggrieved by any decision of the Tax Collector 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 notice in writing 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. (Prior code § 6008; Ord. 1786, 08/25/66; Ord. 3304, 03/12/91)

#### 5.136.100 Records.

It shall be the duty of every operator liable for the collection and payment to the County 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 County, which records the Tax Collector shall have the right to inspect at all reasonable times. (Prior code § 6009; Ord. 1786, 08/25/66)

#### 5.136.110 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 chapter, 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 Collector within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Collector.

(b) At the election of the operator, any amount overpaid, paid more than once or erroneously or illegally collected or received, may be refunded or credited against taxes collectible and remittable in any case where it is established in a manner prescribed by the Tax Collector 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 transient, having paid the tax to the operator, establishes to the satisfaction of the Tax Collector 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. (Prior code § 6010; Ord. 1786, 08/25/66)

#### 5.136.120 Collection of tax.

(a) Actions to Collect. Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the County. Any such tax collectible by an operator which has not been paid to the County shall be deemed a debt owed by the operator to the County. Any person owing money to the County under the provisions of this

chapter shall be liable to an action brought in the name of the County of San Mateo for the recovery of such amount.

(b) Recording Certificate. Lien. If any amount required to be paid to the County under this ordinance is not paid when due, the Tax Collector, may within three (3) years after the amount is due file for record in the office of the San Mateo County Recorder a certificate specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the Tax Collector of the operator liable for same and the fact that the Tax Collector has complied with all provisions of this ordinance in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid together with penalties and interest constitutes a lien upon all real property in the County owned by the operator or afterwards and before the lien expired acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the certificate unless sooner released or otherwise discharged.

(c) Priority and Lien of Tax. The amounts required to be paid by any operator under this ordinance with penalties and interest shall be satisfied first in any of the following cases:

- (1) Whenever the person is insolvent;
- (2) Whenever the person makes a voluntary assignment of his assets;
- (3) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased;
- (4) Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this ordinance levied upon by process of law. This ordinance does not give the County a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

The preference given to the County by this section shall be subordinate to the preferences given to claims for personal services by sections 1204 and 1206 of the Code of Civil Procedure.

(d) Warrant for Collection of Tax. At any time within three (3) years after any operator is delinquent in the payment of any amount herein required to be paid off within (3) years after the last recording of a certificate of lien under section 5.136.120(b), the Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this ordinance. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Collector may pay or advance to the sheriff, marshal or constable, the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution. The Tax Collector, and not the court, shall approve the fees for publication in a newspaper.

(e) Seizure and Sale. At any time within three (3) years after any operator is delinquent in the payment of any amount, the Tax Collector may forthwith collect the amount in the following manner: The Tax Collector shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect occupancy taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil

## Procedure.

(f) **Successor's Liability. Withholding by Purchaser.** If any operator liable for any amount under this ordinance sells out his business or quits the business, his successor or assignee shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Collector showing that it has been paid or a certificate stating that no amount is due.

(g) **Liability of Purchaser. Release.** If the purchaser of a hotel fails to withhold purchase price as required, he shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty (60) days after receiving a written request from the purchaser for a certificate, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than ninety (90) days after receiving the request, the Tax Collector shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Tax Collector of the amount that must be paid as a condition of issuing the certificate. Failure of the Tax Collector to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the operator sells his business or at the time the determination against the operator becomes final, whichever event occurs the later. (Prior code § 6011; Ord. 1786, 08/25/66; Ord. 1904, 06/18/68)

## 5.136.130 Violations.

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 Collector, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as otherwise provided in this code. 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 chapter to be made is guilty of a misdemeanor and is punishable as otherwise provided in this code. (Prior code § 6012; Ord. 1786, 08/25/66)

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