

County of Luzerne

Hotel Room Rental Tax Ordinance Regulations

A. DEFINITIONS

As used hereinafter, those words which are the subject of definitions specified in the Hotel Room Rental Tax Ordinance of Luzerne County, at Section A thereof, shall have the identical meaning for the purpose of these regulations and the Hotel Room Rental Tax Ordinance as adopted by the Commissioners of Luzerne County, Pennsylvania on May 22, 1996 is incorporated herein by reference.

B. IMPOSITION OF TAX

1. Rate of Tax: The Hotel Room Rental Tax is imposed at the rate of five percent (5%) effective July 1, 1996 and will continue thereafter upon the consideration received by each operator of a hotel/inn within the County of Luzerne from each transaction of renting a room or rooms to a transient. As used herein, Renting shall mean the act of paying or being paid consideration, whether received in cash money or otherwise for occupancy.

2. Collection of Tax by Operator: The tax is to be collected by the operator of each hotel/inn, at the time of payment, from each person who pays the consideration of renting a room.

3. Effective Date: The tax shall be applicable to all transactions specified in regulation B(1), above, which occur on or after the effective day of the Hotel Room Rental Tax Ordinance of Luzerne County, and these regulations, July 1, 1996.

C. REGISTRATION

Within thirty (30) days after the effective date of the Hotel Room Rental Tax Ordinance July 1, 1996 or within thirty days after commencing business, whichever is later, each operator of any hotel/inn shall register said hotel/inn with the County Treasurer of Luzerne County, Pennsylvania, by completing the application form provided by the Treasurer, a copy of which is attached to these regulations. The operator of said hotel shall obtain from the County Treasurer a certificate of authorization evidencing his authority to collect the occupancy tax, and said certificate shall at all times be posted in a conspicuous place on the premises of operation.

D. ITEMS SUBJECT TO TAX

Room Occupancy: The occupancy of any room, for consideration, having at least one bed or sleeping accommodation, is subject to the tax. This shall include any group or suite of rooms in which a patron has occupancy, at least one of which rooms has at least one bed or other sleeping accommodation, and between which there is direct access by any means including a doorway or inside hallway.

E. PERMANENT RESIDENTS

The tax is imposed for occupancy by transients and not by permanent residents. After a person has occupied or has the right to occupy for 30 consecutive days, he is no longer a "transient" as defined in the Ordinance. His status as a "permanent resident" is effective for the rental period during which, or at the expiration of which the 30th consecutive day of occupancy is completed and continues thereafter so long as his occupancy remains continuous and uninterrupted. Thus, if a person completes his 30th day of consecutive occupancy during, or at the expiration of, a particular rental period, he is a permanent resident for that entire rental period even though, during a part of the period, he had not yet established his status as a

permanent resident and for each rental period thereafter in which his occupancy continues uninterrupted. He is not a permanent resident, however, as to any rental period prior to the particular rental period during or at the expiration of which he completed his 30th day. As to such prior rental periods, he was and remains a "transient." If a hotel/inn operator collects tax in advance for a rental period during or at the expiration of which is or becomes exempt for tax by reason of the lessee's becoming a permanent resident, the operator must refund the tax so collected to the "permanent resident" and should not report or remit such erroneously collected tax to the Office of the County Treasurer.

A rental period, for the purpose of this subscription, is a period of time, for example, a day, week, month or the like during which, under and subject to the terms of a legally enforceable contract, a transient has a continuous right to occupy a room or rooms in a hotel/inn and is legally bound to pay consideration therefore. (In the absence of evidence to the contrary, it is assumed that a rental period runs from the date of first occupancy or first payment of consideration to the date on which a subsequent payment or consideration is due.) A mere statement of intention to occupy or to permit occupancy, on the part of an occupant or hotel/inn operator, or both, does not create a rental period unless the period in question is the subject of a legally enforceable contract.

The occupancy or right of occupancy must be for 30 consecutive days. A person who merely has the right to use a room or rooms on intermittent days of a week or month cannot become a "permanent resident" even though he cumulatively occupies for more than 30 days.

The status of permanent residents only continues so long as the occupancy or right of occupancy continues uninterrupted. A permanent resident who quits his hotel/inn and breaks his consecutive and continuing occupancy loses his status as a permanent resident; and, with respect to his next occupancy, he does not resume his status as a permanent resident unless and until he again completes 30 consecutive days of occupancy. A transfer from one hotel/inn to another, even though both hotels/inns are owned by the same operator, is a break in occupancy. However, a mere change of rooms in the same hotel/inn is not a break in occupancy.

F. EXCEPTIONS

1. Permanent Residents: A permanent resident as that term is defined in the Ordinance is excluded from Hotel Room Rental Tax liability upon the occupancy of any room or rooms in a hotel/inn for any rental period during which, or at the expiration of which, he is or becomes a permanent resident.

2. Federal and State Employees Engaged in Official Business: The hotel/inn operator does not have to collect the tax if the customer presents a bona fide exemption certificate or document identifying the customer as an employee on official business for the Commonwealth of Pennsylvania or the government of the United States.

3. Records of Exempt Occupancies: The hotel/inn operator shall maintain records to support and identify all exempt occupancies. These records shall include a form to be completed by both the permanent resident and the operator, as well as a statement from the hotel/inn operator that itemizes all exemptions claimed for the month for which the tax return is being made. Exemption certificates, letters of exemption, direct mail permits, and other documents relating to exemptions from tax issued under the provisions of the sales and use portion of the tax reform code of 1971 (72 P.S. Subsection 7101-8203) or regulations promulgated thereunder, are of no force and effect with respect to the tax imposed by the Hotel Room rental tax with the exception noted in subsection 1 of this section.

G. REPORTS, RETURNS, PAYMENTS AND COLLECTION OF TAX

1. Collection from Patron: The operator shall collect the tax imposed by the Ordinance from the patron of the room, and pay it over to the Office of the County Treasurer as provided herein. The operator shall be liable to the County as agent thereof for the payment of the tax to the County as provided in the section.

2. Monthly Return by Operator: Every operator shall transmit to the Treasurer a return, on or before the 25th day of the month that shall contain the previous month's information for which the return is made. The return shall include the amount of consideration received for the transactions during the month for which the return is made, the amount of tax collected by the operator for the period, and other information as the County Treasurer may require. The Treasurer may, upon his discretion, allow some facilities to file their returns on a quarterly basis.

3. Forms: Every report and return shall be made upon a form furnished by the Office of the County Treasurer, which shall be substantially similar to the form attached to these Regulations and marked Appendix "A".

4. Payment to the Office of the County Treasurer: Every operator, at the time of filing every return required by this Section, shall compute and pay to the County Treasurer the taxes collected by him and due to the County during the period for which the report is made.

5. Interest on Late Returns: If any amount of tax due is not remitted by the due date, interest at the rate of 1.5% shall be added for each month or fraction thereof during which the tax shall remain unpaid.

H. FAILURE TO COLLECT AND REPORT TAX, DETERMINATION OF TAX BY COUNTY TREASURER

If any hotel/inn operator shall fail to register with the County Treasurer or shall fail or refuse to collect the hotel room rental tax or to make, within the time provided, under these regulations any report and remittance of said tax or any portion thereof required by the Hotel Room Rental Tax Ordinance or the regulations relative thereto, the County Treasurer 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 County Treasurer shall procure such tax and information as he is able to obtain upon which to base the assessment of any tax imposed by the Hotel Room Rental Tax Ordinance and payable by any hotel operator who has failed to register or refused to collect the same and to make such report and remittance, the County Treasurer shall proceed to determine and assess against such operator the tax provided for by the Hotel Room Rental Tax Ordinance as well as lawful interest. In the event such determination is made, the County Treasurer shall give a notice of the amount so assessed by 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 business. Such operator may within ten (10) days after the serving or mailing of said notice make application in writing to the County Treasurer for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax and interest, if any, determined by the County Treasurer shall become final and conclusive and immediately become due and payable. If such application is made, the Treasurer shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why the amount specified therein should not be fixed for such tax and interest. 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 Treasurer shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner described herein of such determination and the amount of such tax and interest. The amount determined to be due shall be payable after thirty (30) days unless an appeal is taken.

I. APPEAL

Any hotel/inn operator aggrieved by any decision of the County Treasurer with respect to the amount of such tax and interest, if any, may appeal to the Court of Common Pleas of Luzerne County, pursuant to the rules thereof and said operator shall file a notice of the appeal with the County Treasurer within thirty days after the perfection of same.

J. RECORDS

It is presumed that all rooms are subject to the tax until the contrary is established by accurate records from the operator. The burden of proving that the rent or occupancy received is not taxable is upon the operator and the operator must demonstrate same through accurate records. In any case where a hotel operator fails to maintain adequate records as required under these Regulations, any room for which there is not adequate records shall be deemed to be occupied for the entire period for which the supporting records are lacking.

It shall be the duty of every operator liable for the collection and payment to the County Treasurer of any tax imposed by the Hotel Room Rental Tax Ordinance to keep and preserve for a period of three (3) years, all records as may be necessary to determine the amount of such tax which the operator was liable to collect and pay to the County. Said records shall be maintained at the place of business where the subject rooms were rented. Said records shall include but not be limited to folios, lease agreements; general ledgers; night auditor and housekeeper reports; traffic summaries; source of business reports; and any other documents that support room revenues and exemptions. Said records shall be filed in a manner that allows ready access by the Treasurer or Controller of the County or their authorized agents, who shall have the right to inspect same at all times.

In all instances where a hotel/inn operator claims an exemption pursuant to Hotel Room Rental Tax Ordinance pursuant to Regulations, said operator shall maintain among his records folios; lease agreements; vouchers; and documentation specific to the exemptions noted in section F, subsection 2, preceding. The aforementioned records shall be filed in a manner that allows ready access by an authorized agent, as aforementioned, of the County of Luzerne.

K. REFUNDS

Whenever the amount of any tax, interest or penalty has been overpaid, paid more than once, or erroneously or illegally collected or received by the Treasurer under the Hotel Room Rental Tax Ordinance, or regulations relative thereto, it may be refunded provided a verified written claim therefore stating the specific ground upon which the claim is founded, is filed with the County Treasurer within three (3) years of date of payment.

An operator may claim a refund when it is established in the manner prescribed by the Treasurer, that the person from whom the tax has been collected was not an occupant subject to the tax; provided, however, that a refund shall not be allowed unless the amount of the tax collected has either been refunded to the guest or credited to rent subsequently payable to the operator.

No refund shall be paid under the provisions of the section unless claimant establishes his right thereto by written records showing entitlement thereto.

L. ACTIONS TO COLLECT

Any tax required to be paid by an occupant under the provisions of the Hotel Room Rental Tax Ordinance shall be deemed a debt owed by the occupant to the County of Luzerne. Any such tax collected by an operator that 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 by the provisions of the Hotel Room Rental Tax Ordinance shall be liable to an action brought under the name of the County, by the County Solicitor for the recovery of such amount.

All costs associated with any action taken under this section shall be imposed upon the operator.

M. REMITTANCES

The County Treasurer has opened a separate account solely for the purpose of depositing and distributing moneys received from the collection of Hotel Room Rental Tax.

The Treasurer, with the approval from the Salary Board of Luzerne County, has hired a tax administrator to manage and administer the Hotel Room Rental Tax. The Treasurer will deduct the administrative costs attributable to the administration and collection of the tax. The County Treasurer will submit a statement of all direct and indirect costs attributable to the collection of the tax at the time of remittance. The County Treasurer will deduct all costs attributable to the administration of the tax from the Hotel Room Rental Tax account prior to disbursement of said funds.