

**ERIE COUNTY**

**HOTEL LODGING EXCISE TAX**

**CODE OF REGULATIONS**

**AMENDED EFFECTIVE JANUARY 1, 2003**

# ERIE COUNTY HOTEL LODGING EXCISE TAX

## CODE OF REGULATIONS

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# ERIE COUNTY HOTEL LODGING EXCISE TAX

## CODE OF REGULATIONS

### Section 1. Title

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

### Section 2. Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction and are the meanings of the words defined.

- (a) "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) "Auditor" means the Auditor of the County of Erie, Ohio, or his appointed designee.
- (c) "Hotel" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered for a consideration to guests, in which five or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.
- (d) "Transient guest" means persons occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.
- (e) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.
- (f) "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, 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 regulation and shall have the same duties and liabilities as his principal. Compliance with the provisions of this regulation by either the principal or the managing

agent shall, however, be considered to be compliance by both.

- (g) "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms or space or portion thereof, in any hotel for dwelling, lodging or sleeping purposes. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample or display space shall not be considered occupancy within the meaning of this definition unless the person exercising occupancy uses or possesses, or has the right to use or possess all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

### Section 3. Imposition of Tax

For the purpose of providing revenue with which to meet the needs of Erie County, Ohio, for the use of the general fund of the County in making contributions to the convention and visitors' bureau operating within the County, an excise tax is hereby levied on transactions by which lodging by a hotel is or is to be furnished to transient guests.

The tax is two percent (2%) on all rents paid or to be paid by the transient guest for the lodging. Said tax constitutes a debt owed by the transient guest to Erie County, which is extinguished only by payment to the operator as trustee for the County, or to the County. The transient guest 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 paid with each installment. The unpaid tax shall be due upon the transient guest ceasing to occupy space in the hotel. The operator shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging.

### Section 4. Exemptions

No tax shall be imposed under this regulation upon:

Rents not within the taxing power of the County under the Constitution or laws of Ohio or the United States;

No exemption claimed under this section 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 Auditor.

Section 5. Prohibition Against False Evidence of Tax-Exempt Status

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

Section 6. Tax to be Separately Stated and Charged

The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill or statement or charge made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the County, and the operator shall be liable for the collection thereof and for the tax.

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.

Section 7. Registration

Within thirty (30) days after commencing business, each operator of any hotel renting lodging to transient guests shall register said hotel with the Auditor and obtain from him or her 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 the Erie County Hotel Lodging Excise Tax Code of Regulations by registering with the Auditor for the purpose of collecting from transient guests the Hotel Lodging Excise Tax and remitting said tax to the Auditor. This certificate does not constitute a permit."

### Section 8. 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 Auditor, make a return to the Auditor, on forms provided by him or her, of total rents charged and received and the amount of tax collected for transient occupancies. All claims for exemption from tax filed by occupants with the operator during the reporting period shall be filed with the report. At the time the return is filed, the full amount of the tax collected shall be remitted to the Auditor. The Auditor may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to insure collection of the tax and he or she may require further information in the return if such information is pertinent to the collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this regulation shall be held in trust for the account of Erie County until payment thereof is made to the Auditor. All returns and payments submitted by each operator shall be treated as confidential by the Auditor and shall not be released by him or her except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of Ohio, the County of Erie, or in order to comply with requirements of O.R.C. Section 149.43.

### Section 9. Penalties and Interest

- (a) Delinquency. Any operator who fails to remit any tax imposed by this regulation within the time required shall pay a penalty equal to ten percent (10%) of the amount of the tax, in addition to the tax.
- (b) Fraud. If the Auditor determines that the non-payment of any remittance due under this regulation is due to fraud, a penalty equal to twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in paragraph (a) of this section.
- (c) Interest. In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this regulation shall pay interest at the rate per annum prescribed by section 5703.47 of the Ohio Revised Code, on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (d) Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this regulation shall be imposed during the pendency of any hearing provided for in Section 11 of this regulation nor during the pendency of any appeal

to the Board of Erie County Commissioners provided for in Section 12 of this regulation.

- (e) Abatement of Interest and Penalty. In cases where a return has been filed in good faith and an assessment has been paid within the time prescribed by the Auditor, the Auditor may abate any charge of penalty or interest or both.

Section 10. Records, Inspection, Destruction

Each operator 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 regulation, and shall keep all invoices and such other pertinent documents. If the operator furnishes lodging not subject to the tax, the operator's records shall show the identity of the transient guest, if the sale was not 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 opened for a period of three (3) years, unless the Auditor, in writing, consents to their destruction within that period, or by any others requesting that such records be kept for a longer period of time.

Section 11. Failure to Collect and Report Tax, Determination of Tax by County Auditor

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this regulation, any report and remittance of said tax or any portion thereof required by this regulation, the Auditor shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the Auditor shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this regulation and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this regulation. In case such determination is made, the Auditor 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 address. Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the Auditor 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 Auditor shall become final and conclusive and immediately due and payable. If such application is made, the Auditor 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 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 Auditor 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 12.

#### Section 12. Appeal

Any operator aggrieved by any decision of the Auditor with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Erie County Commissioners by filing a notice of appeal with the Auditor and County Commissioners within fifteen (15) days of the serving or mailing of the determination of tax due. The Board of Erie County Commissioners shall fix a time and place for hearing such appeal, and shall give notice in writing to such operator at his last known place of address. The findings of the Board of Erie County Commissioners 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.

#### Section 13. Actions to Collect

Any tax required to be paid by a transient guest under the provisions of this regulation shall be deemed a debt owed by the transient guest to the County. Any such tax collected 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 such a debt to the County under the provisions of this regulation which debt has become delinquent, shall be liable to an action brought in the name of the County of Erie, by and through the Erie County Prosecutor, for the recovery of such amount.



#### Section 14. Refunds

- (a) Whenever the amount of 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 regulation, 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 Auditor within three years of the date of payment. The claim shall be on forms furnished by the Auditor.
- (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 Auditor that the person from whom the tax has been collected was not a transient guest; 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 guest or credited to rent subsequently payable by the transient to the operator.
- (c) A transient guest may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the County by filing of a claim in the manner provided in subparagraph (a) of this section, but only when the tax was paid by the transient guest directly to the Auditor, or when the transient guest having paid the tax to the operator, establishes to the satisfaction of the Auditor that the transient guest 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.

#### Section 15. Separability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this regulation or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this regulation or any part thereof. The Erie County Commission hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional.

Section 16. Money Received, Where Credited

That the proceeds of the Hotel Lodging Excise Tax shall be placed in a separate fund entitled "Hotel-Motel Tax Fund". After deducting the real and actual cost of administering the same as determined by the Auditor and returning to each municipal corporation or township that does not levy an excise tax on hotel lodging, a uniform percentage, set at one percent of the tax collected in each such municipal corporation and the unincorporated portion of each such township from such transactions, said funds are to be spent solely to make contributions to the convention and visitors' bureau operating within Erie County. The amount of the contribution to be made to the convention and visitors' bureau shall be determined by the Board of Erie County Commissioners.

Section 17. Duties of Convention and Visitors' Bureau

A. The amounts allocated herein and hereby to the Convention and Visitors' Bureau are so appropriated thereto on condition that the said bureau recognizes that the County's hotel and motel industry which bears responsibility hereunder for the collection of the tax hereby levied, extends to the boundaries of Erie County, therefore, undertakes to promote the purposes and premises of the resolution adopting these regulations throughout the entire County so that the hotel and motel industry of the County generally may share as equitably as possible in the benefits to be derived from the promotion of such purposes and premises.

B. The Convention and Visitors' Bureau of Erie County, which receives funds under this regulation, shall present quarterly financial and performance reports, as well as an annual operations report, each showing its use for the funds hereby provided, to the Board of Erie County Commissioners, the Auditor and the County Administrator, who shall be charged with the duty of inquiry examination of the work of the said Convention and Visitors' Bureau, to the end that the intent and purposes of the resolution adopting these regulations have been and are being satisfied.