



# Delaware County Commissioners

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## **RESOLUTION 95-670**

### **IN THE MATTER OF APPROVING DELAWARE COUNTY EXCISE TAX ON LODGING OF TRANSIENT GUESTS CODE OF REGULATIONS:**

It was moved by Mr. Wuertz, seconded by Mr. Jackson to authorize execution of Delaware County Excise Tax on Lodging of Transient Guests Code of Regulations as follows:

#### **TITLE**

This Code of Regulations shall be known and may be cited and referred to as the "Delaware County Excise Tax on Lodging of Transient Guests, Code of Regulations". The title or name of the Bureau shall be the "Delaware County Convention and Visitors' Bureau", and shall hereinafter sometimes be referred to as "Bureau".

#### **REGION**

The Region for which the Bureau shall be created and maintained shall be all of Delaware County, Ohio.

#### **DEFINITIONS**

As used in the following Sections of the Delaware County Excise Tax on Lodging of Transient Guests, Code of Regulations:

"Auditor" means the Delaware County Auditor and any of his/her assistants designated to assist in administering and enforcing the collection of the excise tax on lodging of transient guests 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 O.R.C. 302.30.

"County" means the County of Delaware, State of Ohio.

"Executive" means the President of the County of Delaware Board of County Commissioners ("Board") and any of his assistants or designees.

"Persons" means individuals, partnerships, corporations, receivers, assignees, trustees in bankruptcy, estates, firms, associations, joint ventures, clubs, societies, and combinations of the foregoing in any form.

"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.

"Transient guest(s)" means person(s) occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.

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

"Vendor" means a person who is required to have an Ohio Retail Sales Tax Vendor License and to operate a business pursuant to O.R.C. 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

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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.

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

"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.

"Rent" means the aggregate value in money or anything paid or delivered, or promises to be paid or delivered for hotel lodging, without any deduction for the cost of labor, service, property used, interest discount 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 discounts allowed at the time the lodging is furnished or contracted to be furnished.

"Notice" means communication submitted in writing and personally delivered or forwarded by mail to the last known address of anyone affected by the provisions of the Resolution

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

#### LEVY OF TAX; WHEN COLLECTABLE; EXEMPTIONS; PRESUMPTION

An excise tax is hereby levied and imposed upon each transaction in Delaware County by which lodging is or is to be furnished by a vendor to a transient guest(s), at a rate of three per cent (3%) of the rent for each such transaction, on and after January 1, 1996.

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

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.

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 therefor.

The tax does not apply to transactions for lodging furnished to representatives of the United States federal government which are paid directly by the federal government. Such transactions will qualify as exempt by filing a certificate of exemptions together with the bill, statement, or invoice and copies of any checks received in payment.

#### LIABILITIES OF VENDOR AND CONSUMER; CERTIFICATE OF EXEMPTION

The tax is imposed upon and shall be paid by the consumer to the vendor as trustee solely for the benefit of Delaware 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.

Each such transaction shall be report on, and the amount of the tax applicable thereto shall 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.

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.

Within thirty (30) days after enacting this resolution, or within thirty (30) days after commencing business, whichever is later, each operation of any hotel or motel renting lodging to transient guests shall register said motel or hotel with the County Administrator or his designee 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:

- The name of operator.
- The address of the hotel or motel.
- The date upon which the certificate was issued.
- "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Excise Tax on Lodging of Transient Guests by registering with the Delaware County Administrator or his designee for the purpose of collecting from transient guests the Hotel-Motel Tax and remitting said tax to the County Administrator or his designee. This certificate does not constitute a permit."

#### RETURNS; WHEN DUE; REMISSION OF PENALTIES; PROCEDURE THEREON; FAILURE TO FILE; FORM

Each vendor shall, on or before the last day of each month, make and file a full and complete return with the County Administrator or his designee for the preceding month 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.

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

Such returns shall be submitted to the County Administrator or his designee, together with the payment of the amount of tax shown to be due thereon plus penalty interest.

Upon receiving the same, the County Administrator or his designee shall promptly stamp or otherwise mark on the forms date received and the amount of payment received.

Any vendor who fails to file a complete return as required hereby, shall forfeit and pay into the County Treasury a ten per cent (10%) penalty of the amount of the tax and such may be collected by assessment in the manner provided herein.

The form of the return shall be prescribed by the County Administrator or his designee.

#### ASSESSMENTS; LIABILITIES OF VENDOR AND CONSUMER

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 any vendor fails to collect the tax or any consumer fails to pay the tax on any transaction subject thereto, such vendor or consumer shall be personally liable for the same, and the County Administrator or his designee may make an assessment against the vendor in the first case, or the vendor or consumer in the second case, as the facts may require, based upon any information in his possession.

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.

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 due on a particular transaction if the tax has been paid by another.

#### MAINTENANCE AND INSPECTION OF RECORDS; ASSESSMENTS

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 bills, rent payments and/or refunds thereon, room rate sheets or cards of prices per day of each room as required by O.R.C. 3731.16, receipts of taxes collected, copies of the appropriate schedule of Federal 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 deposit 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.

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.

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

All such records and documents shall be open during regular business hours to inspection of the County Administrator or his designee 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 Executive by O.R.C. 305.21. If his investigation of such complete records reveals that any tax or additional tax should properly have been returned and remitted by the vendor, he shall make an assessment of such tax or additional tax in the manner provided if the County Administrator or his designee 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.

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 County Administrator or his designee 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 cash or by credit, as the facts may require, based upon any 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 Auditor 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.

If any vendor:

- (1) fails to maintain complete records, as required hereby; or
- (2) fails or refuses to permit the County Administrator or his designee to inspect any records; or
- (3) refuses to permit the County Administrator or his designee to sample or test check his business activity; or
- (4) having filed a return or returns, misrepresents or fails to disclose, any material fact of 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 County Administrator or his designee shall determine the proper amount of tax by any of the means set forth herein above; the tax as so determined will deemed to be the tax collected by such vendor during the entire period of time under review; and the County Administrator or his designee 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 ten per cent (10%) per annum, computed from the time the amounts of tax assessed should have been paid; (b) plus a penalty of twenty-five per cent (25%) of the amount of the assessment of tax.

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.

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 County Administrator or his designee shall be treated as confidential by the County Administrator or his designee 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 the County of Delaware which levies a tax pursuant to O.R.C. 5739.024(B).

#### PROCEDURE FOLLOWING ASSESSMENT; APPEALS

Each assessment shall be in writing stating clearly the reasons and basis therefor, upon forms adopted by the County Administrator or his designee.

In each case of an assessment, the County Administrator or his designee 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.

Unless the assessee, within thirty (30) days after service thereof, files with the County Administrator or his designee a petition for reassessment in writing addressed to the Executive 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 County Administrator or his designee shall cause to be filed a judgment lien in the amount of the assessment, including penalties and interest added thereto under the provisions hereof.

When a petition for reassessment is timely filed, the Executive 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 Executive upon the petition after hearing shall be served 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.

If aggrieved by the decision of the Executive, the petitioner may appeal to the Court of Common Pleas pursuant to O.R.C. 307.56.

When the merits of the assessment or any part thereof is finally adjudicated, the County Administrator or his designee shall proceed to collect tax.

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

#### 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.

#### 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 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 County Administrator or his designee 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 accrued and unpaid during the operation of the business by the former owner.

#### 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 County Administrator or his designee 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 County Administrator or his designee shall promptly determine the amount of the refund due (adding thereto interest at ten per cent (10%) 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 County Administrator or his designee shall certify the excess amount of refund allowed or the full amount, as the case may be, to the County Treasurer who shall draw his warrant for such certified amount on the Undivided Hotel Lodging Fund in favor of the claimant. The County Administrator or his designee shall pay such amount from any monies to the credit of the appropriate Undivided Hotel Lodging Fund.

If, however, the County Administrator or his designee'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 and the aggrieved claimant and the County shall have all the rights, remedies, and duties as set forth upon an assessment; but the County Administrator or his designee shall withhold his certification until the merits of the claim have been finally adjudicated.

#### SETTLEMENT OF TAX FUND

All receipts collected from the excise tax levied hereby shall be deposited in the Undivided Hotel Lodging Tax Fund. The Board of Commissioners shall inform the County Administrator or his designee and the Appointing Authority of each political subdivision in Delaware County which levies such a tax on and after the date of this Resolution.

Commencing January 1, 1996, and thereafter on the 15th day (or if the 15th is not a regular business day, then the first business day following such day) of July and January of each year, the County Administrator or his designee shall credit the County General Fund with an amount certified by the County Treasurer as the cost of administration of the Hotel Lodging Excise Tax during the previous half year and charge the Undivided Hotel Lodging Tax Fund with the actual administration costs. The proportion of the cost is to be based on the total receipts received in each district. Each district should be credited with their proportionate share by the County Treasurer prior to settlement by the County Administrator or his designee.

After the allocations, one per cent (1%) of the Undivided Hotel Lodging Tax balance will be paid to each municipal corporation, township, and village that does have a Hotel/Motel and which does not already levy a three per cent (3%) Hotel/Motel Lodging Tax. The balance remaining in the Undivided Hotel Lodging Tax Fund shall upon certification by the County Administrator or his designee that tax collections for the previous half year have been closed, be forthwith paid to the County Hotel Lodging Tax Fund and such funds are hereby appropriated as required by law to the use of the Delaware County Convention and Visitors' Bureau.

A claim for refund for taxes illegally or erroneously collected or paid, certified by the County Treasurer to the County Administrator or his designee and for which his warrant is drawn on the County Treasurer, shall be paid from the Undivided Hotel Lodging Tax Fund.

#### RESPONSIBILITIES OF CONVENTION BUREAU AND COUNTY

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

The Delaware County Convention and Visitors' Bureau shall present quarterly financial and performance reports as well as an annual operations report each showing its use of the funds hereby appropriated, to the County Executive and County Administrator or his designee, who shall be charged with the duty of inquiry examination of the work of said Delaware County Convention and Visitors' Bureau to the end that the intent and purposes of the Resolution have been and are being satisfied.

#### RECOGNIZE LOCAL GOVERNMENTS WHO HAVE ADDITIONAL 3% TAX

The County recognizes that the City of Delaware, and Berkshire Township are presently levying a hotel excise tax, and the Clerk of Board is hereby directed to forward a certified copy of this Resolution to the Mayor of each municipal corporation and to the Board of Township Trustees of each township in Delaware County, the County Auditor, and County Treasurer, and The Delaware County Convention and Visitors' Bureau.

Vote on Motion: Mr. Jackson, Aye, Mr. Wuertz, Aye, Mr. Sheets, Absent.

I, Brandy Wilson, Deputy Clerk to the Board of Delaware County Commissioners hereby certify that the foregoing is a true and correct copy of a resolution of the Board of County Commissioners of Delaware County duly adopted on September 25, 1995, and appearing upon the official records of said Board.

*Brandy Wilson*

Brandy Wilson, Deputy Clerk to Commissioners