

## **14.023 Uniform Transient Occupancy Tax.**

### **(a) DEFINITIONS AND GENERAL PROVISIONS.**

( 1 ) Reference to Ordinance or Statute. Whenever any reference is made to any portion of this, or of any other ordinance, or to any statute, such reference shall apply to all amendments and additions thereto now or hereafter made.

(2) Severance Clause. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter 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 chapter or any part thereof. The Board of Supervisors 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, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

(3) Tenses. The present tense includes the past and future tenses.

(4) Genders. Each gender includes the other two genders.

(5) Number. The singular number includes the plural and the plural the singular.

(6) Definitions. Unless the context otherwise requires , the definitions in this article shall govern the construction of this chapter.

(7) Article. "Article" means an article of this chapter unless some other chapter or statute is mentioned.

(8) Board. "Board" means the Board of Supervisors of tile County of San Bernardino.

(9) County. "County" means the County of San Bernardino.

(10) Hotel. "Hotel" means any structure in the unincorporated territory of the County, or any portion of any such 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, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

(11) 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.

(12) 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 shall also be deemed an operator for the purposes of this chapter 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.

(13) Person. "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 of combination acting as a unit.

(14) 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.

(15) "Shall" and "May." "Shall" is mandatory and "may" is permissive.

(16) Section. "Section" means a section of this chapter.

(17) Transient. "Transient" means any person who exercises occupancy or is entitled to occupancy 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 person so occupying space in a hotel shall be deemed a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered.

(18) Tax Collector. "Tax Collector" means the Tax Collector of the County of San Bernardino.

(b) IMPOSITION OF TAX.

(1) Tax imposed. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of 7% of the rent charged by the operator.

(2) Payment by Transient. 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 paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If, for any reason the tax due is not paid to the operator of the hotel, the Tax Collector may require the transient to pay such tax directly to the Tax Collector.

(3) Exemptions. If a proper claim for exemption is made, a tax shall not be imposed upon (a), (b), (c):

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose the tax herein provided;

(b) Any Federal or State of California officer or employee when on official business;

(c) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or intentional treaty.

(d) Any occupancy of a hotel which is used exclusively for religious, educational, charitable or welfare purposes, such as church lodges, camps and retreats, Boy Scout and Girl Scout grounds, fresh air camps, and similar sites, shall be exempt from this tax, and the operators of such hotels are not required to register as provided for under Article 3. However, it shall be the duty of the operator of any such hotel to furnish the Tax Collector with such information as the Tax Collector deems necessary to establish or retain such exempt status. Transients occupying such hotels are not required to furnish individual exemption claims.

(4) Claim of Exemption. The Tax Collector shall prepare and furnish to the operators of hotels, who have registered as required by Article 3, forms by which transients may claim exemption from the payment of the tax. An exemption shall not be granted to any transient except upon a claim therefor made at the time rent is collected and under penalty of perjury upon the form supplied by the Tax Collector.

(5) Operator's Duties. Each operator shall collect the tax imposed by this section 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. The operator of a hotel shall not 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.

(6) Records. Every operator liable for the collection and payment to the County of any tax imposed by this article shall keep and preserve, for not less than three (3) years, all records which may be necessary to determine the amount of such tax for the collection of, and payment of, to the County may be or may become liable. The Tax Collector may inspect these records at any reasonable time. The operator shall make such records available at any reasonable time requested by the Tax Collector.

(c) REGISTRATION.

(1) Operator Must Register. Within thirty (30) days after the effective date of this section, or within thirty

(30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register the said hotel with the Tax Collector. Upon such registration, the Tax Collector shall issue to such operator a "Transient Occupancy, Registration Certificate."

(2) Posting of Certificate. The operator shall post, and at all times keep posted in a conspicuous place on the premises of the hotel, the transient occupancy registration certificate.

(3) Contents of Certificate. The transient occupancy 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 Uniform Transient Occupancy Tax Ordinance by registering with the Tax Collector for the purpose of collecting from transients the Transient Occupancy Tax 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.

(d) REPORTING AND REMITTING.

(1) Operator Must Report. Each operator, on or before the last day of the month following the close of the calendar quarter, or at the close of any other reporting period which may be established by the Tax Collector, shall make a return to the Tax Collector, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies.

(2) Payment of the Tax. At the time the return is filed, the operator shall remit the full amount of the tax collected to the Tax Collector. The Tax Collector may establish shorter, longer, or other reporting periods for any certificate holder if he deems it necessary or expedient in order to insure collection of the tax. The Tax Collector may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason.

(3) Taxes Held in Trust. Every operator shall hold in trust for the account of the County until payment thereof is made to the Tax Collector, all taxes collected by such operator.

(e) PENALTIES AND INTEREST.

(1) Original Delinquency. Any operator who fails to remit any tax imposed by this section 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.

(2) 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.

(3) Fraud. If the Tax Administrator determines that the non-payment of any remittance due under this section is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in Section 14.023(e)(1) and 14.023(e)(2).

(4) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this section shall pay interest at the rate of one-half of one percent (1/2%) 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.

(5) 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.

(6) Failure to Collect and Report Tax. Determination of Tax Administrator. If any operator shall fail or refuse to collect said tax and to make, within the time provided in this section, any report and remittance of said tax or any portion thereof required by this section, 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 section 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 section.

(7) Notice. If the Tax Collector makes a determination pursuant to this article, he shall give a notice of the amount so assessed, either by serving such notice 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.

(8) Application for Hearing. Within ten (10) days after the serving upon any operator of such notice, such operator may apply 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.

(9) Hearing by Tax Collector. 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 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 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 Subsection (1).

(f) APPEAL.

(1) Notice of Appeal. Any operator deeming himself aggrieved by any decision of the Tax Collector with respect to the amount of the tax, interest and penalties, if any, may appeal to the Board by filing a notice of appeal with the Clerk of the Board within fifteen (15) days of the serving or mailing of the determination of the tax due.

(2) Notice of Hearing. Upon the filing of a notice of appeal, the Board shall fix a time and place for hearing such appeal and the Clerk of the Board shall give not less than five (5) days notice in writing, either personally or by United States mail, postage prepaid, to the last known address of the operator.

(3) Appointment of Referee. The Board may appoint a referee to take testimony at any hearing provided for in this article, and to report his findings and recommendations to the Board. Neither the Tax Collector nor any officer or employee in be office of the Tax Collector may be appointed referee.

(4) Compensation of Referee. If the Board appoints a County officer or County employee to act as referee, he shall serve as such without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position.

(5) Conduct of hearing. At the time set for the hearing or at the date to which the hearing may be continued by the Board or referee, the Board or referee shall hear the appellant and any other competent witnesses and decide whether the determination of the Tax Collector was correct or not, and if not, what tax, interest, or penalties, if any are due to the County from the appellant. The Board or referee may place any witness, including the appellant, under oath.

(6) Decision on Appeal. The Board shall determine from the evidence or from the report of the referee, what tax, interest, or penalties, if any, are due to the County from the appellant. This decision shall be final and conclusive. The Clerk of the Board shall serve a copy of the decision upon the appellant as provided in Section 14.023(f)(2). Any amount due shall be immediately due and payable upon the service of the said notice.

(g) REFUNDS. 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 section, the operator so paying may have such amount applied to subsequent taxes due or it may be refunded as provided in this article if, within three (3) years after the date of payment the operator files with the Tax Collector in writing, a claim therefor. In such claim the operator shall state, under penalty of perjury, the specific grounds and specific facts upon which the claim is founded. The claims shall be on forms furnished by the Tax Collector.

(1) Credit to Operator. An operator may take as credit against subsequent taxes, the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Collector that the person from whom the tax was collected was not a transient and 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.

(2) Refund to Operator. When an operator establishes a right to a credit as provided in this article, and also shows to the satisfaction of the Tax Collector either that he no longer is operating a hotel in the unincorporated territory of the County or will cease such operation before the credit can be applied, and files a proper claim therefor, in lieu of such credit the County shall refund to such operator the amount overpaid, paid more than once or erroneously or illegally collected or received.

(3) Refund to Guest. A transient or other guest of a hotel 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 Section 14.023(g), if the tax was paid by the transient or other guest directly to the Tax Collector, or if the transient or other guest has paid the tax to the operator, and establishes to the satisfaction of the Tax Collector that the transient or other guest has been unable to obtain a refund from the operator who collected the tax.

(4) Written Records. A refund shall not be paid pursuant to this article unless the claimant establishes his right thereto by written records showing that he is entitled thereto.

(h) CIVIL ACTIONS.

(1) Debt Due From Transient. Any tax required to be paid by any transient under the provisions of this section shall be deemed a debt owed by the transient to the County.

(2) Debt Due from Operator. Any tax collected from a transient by an operator pursuant to the provisions of this section which has not been paid to the County shall be deemed a debt owed by the operator to the County.

(3) Actions to Collect. The Tax Collector, in the name of the County of San Bernardino, as plaintiff, may bring suit for the recovery of this section.

(4) Responsibility. 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 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 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 Bernardino for the recovery of such amount.

(5) Recording Certificate; Lien. If any amount required to be paid to the County under this chapter 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 Bernardino 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 the 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 expires 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.

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

(A) Whenever the person is insolvent.

(B) Whenever the person makes a voluntary assignment of his assets.

(C) Whenever the estate of the person in the hands of executors, administrators or heirs is insufficient to pay all debts due from the deceased.

(D) Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this ordinance are 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 preference given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

(7) 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.

(8) Successor's Liability -- Withholding by Purchaser. If any operator liable for any amount under this chapter 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.

(9) Liability of Purchaser; Release. If the purchaser of a hotel fails to withhold from the 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 thirty (30) days after receiving a written request from the purchaser for a certificate, or within thirty (30) 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 sixty (60) days after receiving the request, the Tax Collector shall either issue the certificate or mail notice to 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 from the 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 that the determination against the operator becomes final, whichever event occurs the later.

#### (I) VIOLATIONS.

(1) Misdemeanor. Every person is guilty of a misdemeanor who:

(A) Fails or refuses to register as required by this section.

(B) Fails or refuses to furnish any return required to be made, or fails or refuses to furnish a supplemental return or other data required by the Tax Collector.

(C) Renders a false or fraudulent return.

(D) If required by this section to make, render, sign or verify any report or claim, makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due.

(2) Punishment. Violation of any provisions of this section is punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment in the County Jail for not more than six (6) months or by both such fine and imprisonment.

(E) Collects the tax due pursuant to this section from any transient and fails to pay the same to the County

(F) Violates in any way any other provision of this section.