

## Chapter 185

### Transient Occupancy Tax

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#### CROSS REFERENCE

Power to levy - see Ohio R.C. 5739.02(C)

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#### 185.02 RATE OF TAX

Commencing on June 1, 1978, for the purpose of providing revenue for the purposes of general Municipal operations, maintenance, new equipment, extension and enlargement of Municipal services and facilities, and capital improvements by the City, there is hereby levied a tax of three percent (3%) on all rents received by a hotel for lodging furnished to transient guests, such tax to be known as the transient guest tax.

Such tax constitutes a debt owed by the transient guest to the City which is satisfied only by payment to the operator as trustee for the City, or to the City. 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'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 Commissioner may require that such tax shall be paid directly to the Tax Commissioner. (Ord. 36-1978. Passed 5-8-78.)

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### 185.03 EXEMPTIONS

(a) No tax shall be imposed under this chapter:

(1) Upon rents not within the taxing power of the City under the Constitution or laws of Ohio or the United States;

(2) Upon rents paid by the State of Ohio or any of its political subdivisions;

(3) Upon rents of two dollars (\$2.00) a day or less.

(b) No exemption claimed under subsection (a)(1) or (2) hereof shall be granted except upon a claim therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the Tax Commissioner. All claims of exemption under subsection (a)(3) hereof shall be made in the manner prescribed by the Tax Commissioner.

(Ord. 36-1978. Passed 5-8-78.)

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### 185.04 TAX TO BE SEPARATELY STATED AND CHARGED

(a) 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 such 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 City, and the operator shall be liable for the collection thereof and for the tax.

(b) 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. (Ord. 36-1978. Passed 5-8-78.)

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## 185.05 REGISTRATION

Within thirty days after the effective date of this section, or within thirty days after commencing business whichever is later, each operator of any hotel renting lodging to transient guests shall register such hotel with the Tax Commissioner and obtain from him a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address and business telephone number of the hotel;
- (c) The date upon which the certificate was issued;
- (d) "This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the transient occupancy tax ordinance by registering with the Tax Commissioner for the purpose of collecting from transient guests the transient occupancy tax and remitting said tax to the Tax Commissioner. This certificate does not constitute a permit." (Ord. 36-1978. Passed 5-8-78.)

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## 185.06 REPORTING AND REMITTING

(a) Each operator shall, on or before the fifteenth day of the month following the close of each calendar month make a return to the Tax Commissioner, on forms obtainable from him, of the total rents charged and received and the amount of tax collected for transient occupancies. However, the Commissioner may, when authorized by rule of general application adopted by the Board of Review, approve the filing of returns and payment of the tax on a quarterly basis if the total average monthly Mason tax during the previous tax year was less than \$300. 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 Tax Commissioner. The Tax Commissioner 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 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 chapter shall be held in trust for the account of the City until payment thereof is made to the Tax Commissioner. All returns and payments submitted by each operator shall be treated as confidential by the Tax Commissioner and shall not be released by him 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 Warren, or the City of Mason for official use only. The nonavailability or failure to obtain forms shall not relieve an operator from timely paying such tax.

(b) No person, including any officer of a corporation or employee of a corporation having control or supervision of or charged with the responsibility of filing returns, shall fail to file any return or report required to be filed by this chapter, or file or cause to be filed any incomplete, false or fraudulent return, report or statement, or aid or abet another in the filing of any false or fraudulent return, report or statement.

(c) If any operator required to file quarterly returns under this chapter fails, on two consecutive quarters within a twelve-month period, to file such returns when due or to pay the tax thereon, or if any operator authorized by the Tax Commissioner to file returns at less frequent intervals, fails on two or more occasions within a twenty-four month period, to file such returns when due or to pay the tax due thereon, the Tax Commissioner may require such operator to furnish security in an amount equal to the average tax liability of the operator for a period of one year, as determined by the Tax Commissioner from a review of returns or other information pertaining to such operator, which amount shall in no event be less than one hundred dollars (\$100.00). Such security may be in the form of an advance tax payment to be applied to pay the tax due on subsequent returns, or a corporate surety bond, satisfactory to the Tax Commissioner, conditioned upon payment of the tax due with the returns from the operator. Such security must be filed within ten days following the operator's receipt of the notice from the Tax Commissioner of its requirements. A corporate surety bond filed under this section shall be returned to the operator if, for a period of twelve consecutive months following the date the bond was filed, the

operator has filed all returns and remitted payment therewith within the time prescribed in this chapter.

(d) If any operator required to file returns and to remit tax due to the City under the provisions of this chapter, fails for any reason to make such filing or payment, any of its officers or employees having control or supervision of or charged with the responsibility of filing returns and making payments, shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or remit tax due. The sum due for such liability may be collected by assessment in the manner provided in this chapter. (Ord. 36-1978. Passed 5-8-78.)

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## 185.07 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 equal to ten percent (10%) of the amount of the tax, in addition to the tax.

(b) Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty equal to ten percent (10%) of the amount of the tax and previous penalty in addition to the tax and the ten percent (10%) penalty first imposed. An additional penalty equal to ten percent (10%) of the total tax and penalty of the previous thirty-day period shall be added for each successive thirty-day period that the account remains delinquent.

(c) Fraud. If the Tax Commissioner determines that the nonpayment of any remittance due under this chapter 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 subsections (a) and (b) hereof.

(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.

(e) Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing provided for in Section 185.08 nor

during the pendency of any appeal to the Tax Commissioner provided for in Section 185.09.  
(Ord. 36-1978. Passed 5-8-78.)

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## 185.08 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY TAX COMMISSIONER

If any operator shall fail or refuse to collect such tax and to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof required by this chapter, the Tax Commissioner 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 Commissioner procures 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 Commissioner 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 days after the serving or mailing of such notice make application in writing to the Tax Commissioner 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 Commissioner shall become final and conclusive and immediately due and payable. If such application is made, the Tax Commissioner shall give not less than five days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in such notice why the 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 Commissioner shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of the determination and the amount of such tax, interest and penalty. The amount determined to be due shall be payable after thirty days unless an appeal is taken as provided in Section 185.09. The Tax Commissioner shall have the power to compromise any liability imposed by this chapter.

(Ord. 36-1978. Passed 5-8-78.)

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## 185.09 APPEAL

Any operator aggrieved by any decision of the Tax Commissioner with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Review as created and constituted under Section 181.13 by filing a notice of appeal with the Board within thirty days of the serving or mailing of the determination of tax due. The Board 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 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.

(Ord. 36-1978. Passed 5-8-78.)

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## 185.10 RECORDS

(a) It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, 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 City. 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 exempted by reason of such identity, or the nature of the transaction if exempted for any other reason.

(b) All such records and other documents shall be open during business hours to the inspection of the Tax Commissioner and shall be preserved for a period of four years, unless the Tax Commissioner in writing, consents to their destruction within that period, or by order requires that they be kept longer. (Ord. 36-1978. Passed 5-8-78.)

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## 185.11 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 City under this chapter, it may be refunded as provided in subsections (b) and (c) hereof provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Commissioner within three years of the date of payment. The claim shall be on forms furnished by the Tax Commissioner.

(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 Tax Commissioner 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 City by filing of a claim in the manner provided in subsection (a) hereof, but only when the tax was paid by the transient guest directly to the Tax Commissioner, or when the transient guest having paid the tax to the operator, establishes to the satisfaction of the Tax Commissioner 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 and such refund exceeds one dollar (\$1.00). (Ord. 36-1978. Passed 5-8-78.)

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## 185.12 ACTIONS TO COLLECT

Any tax required to be paid by a transient guest under the provisions of this chapter shall be deemed a debt owed by the transient guest to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

(Ord. 36-1978. Passed 5-8-78.)

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### 185.13 SEPARABILITY

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. Council 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.

(Ord. 36-1978. Passed 5-8-78.)

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### 185.14 MONEYS CREDITED TO GENERAL FUND

The moneys received under the provisions of this chapter shall be credited to the General Fund of the City. (Ord. 36-1978. Passed 5-8-78.)

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### 185.99 VIOLATIONS; MISDEMEANOR

(a) Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both for each offense.

(b) 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 Commissioner, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid for each offense.

(c) Any person required to make, render, sign or verify any report or claim who makes a 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 aforesaid for each offense. (Ord. 36-1978. Passed 5-8-78.)