

ARTICLE III. HOTEL-MOTEL OCCUPANCY TAX

Sec. 17-46. Levy of tax; rate; exceptions.

(a) There is hereby levied a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs two dollars (\$2.00) or more each day, and is ordinarily used for sleeping, such tax to be equal to seven (7) per cent of the price paid for the room (exclusive of other occupancy taxes imposed by other governmental agencies).

(b) No tax shall be imposed upon a permanent resident as hereinafter defined. If a hotel customer enters into an agreement to reside for thirty (30) days or more, (and pays for the right to the use of the room for the entire thirty (30) days or more) then such thirty (30) days is nontaxable. However, if there is no indication that the customer will reside more than thirty (30) days at check-in, then she must pay tax on the first thirty (30) days. There is no tax due after thirty (30) days of occupancy through the end of the following calendar year when the occupant will again have to qualify for the exemption. Also, the thirty-day exemption is not retroactive if the customer did not state she was staying over thirty (30) days at the actual check-in.

(Ord. No. 77-131, § 4, 11-8-77; Ord. No. 87-51, § 1, 8-25-87; Ord. No. 96-56, § 1, 8-27-96)

Sec. 17-47. Definitions.

The following words, terms and phrases for the purpose of this article, except where the context clearly indicates another meaning, are defined as follows:

(a) *Hotel*: "Hotel" shall mean any building in which members of the public obtain sleeping accommodations for consideration. The term includes hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast. The term does not include:

(1) A hospital, sanitarium, or nursing home; or

(2) A dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution.

(b) *Consideration*: "Consideration" shall mean the cost of the room in such hotel only if the room is one ordinarily used for sleeping, and shall not include the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

(c) *Occupancy*: "Occupancy" shall mean the use or possession, or the right to the use or possession, of any room in a hotel if the room is one ordinarily used for sleeping and if the occupant's use, possession, or right to use or possess, extends for a period of less than thirty (30) days.

(d) *Occupant*: "Occupant" shall mean anyone who, for a consideration, uses, possesses, or has a right to use or possess, any room in a hotel if the room is one ordinarily used for sleeping.

(e) *Person*: "Person" shall mean any individual, company, corporation, or association

owning, operating, managing or controlling any hotel.

(f) *Quarterly period*: "Quarterly period" shall mean the regular calendar quarters of the year, the first quarter being composed of the months of January, February and March; the second quarter being composed of the months of April, May and June; the third

quarter being composed of the months of July, August and September; and the fourth quarter being composed of the months of October, November and December.

(g) *Permanent resident*: "Permanent resident" shall mean any individual or group of individuals who has or shall have the right to occupancy of any room or rooms in a hotel or other facility as hereinabove defined for at least thirty (30) consecutive days during the current calendar year or preceding year.

(Ord. No. 77-131, § 4, 11-8-77; Ord. No. 87-51, § 1, 8-25-87; Ord. No. 96-56, § 1, 8-27-96)

Sec. 17-48. Use of revenues.

The revenues from said hotel occupancy tax shall be used for any of the purposes enumerated in Chapter 351 of the Texas Tax Code and shall also be subject to the limitations stated in this article.

(Ord. No. 77-1 31, ¶ 4, 11 -8-77; Ord. No. 87-51, ¶ 1, 8-25-87; Ord. No. 96-56, § 1, 8-27-96)

Sec. 17-49. Collection.

Every person owning, operating, managing or controlling any hotel or motel or other facility as defined hereinabove, within the City of Odessa, Texas, shall collect the tax imposed in section 17-46 hereof for the City of Odessa, Texas.

(Ord. No. 77-131, ¶ 4, 11-8-77; Ord. No. 87-51, ¶ 1, 8-25-87)

Sec. 17-50. Reports and payment.

On the last day of the month following each quarterly period, every person required in section 17-49 hereof to collect the tax imposed herein shall file a report with the billing and collection department of the City of Odessa, showing the gross consideration paid for hotel rooms as defined herein, in the preceding quarter, as well as the amount of tax collected on such occupancies, and the total tax exempt receipts. Such person shall deliver to the department the tax due on such occupancies at the time offiling such report.

(Ord. No. 77-131, ¶ 4, 11-8-77; Ord. No. 87-51, ¶ 1, 8-25-87; Ord. 110.96-56, § 1, 8-27-96)

Sec. 17-51. Rules, regulations and audit authority.

(a) The finance department and the internal auditor are authorized to adopt such procedures, rules and regulations as are reasonably necessary to effectively collect the tax levied herein and provide the appropriate documentation for tax exempt sales, and shall, upon request of any person owning, operating, managing or controlling any hotel or other facility as hereinabove defined, furnish a copy of such procedures, rules and regulations for the guidance of such person and facilitate the collection of such taxas such collection is required herein. Such procedures, rules and regulations shall be in writing, and a copy thereof shall be placed on file with the city secretary.

(b) The city manager shall designate those city officials who shall have authority to access the books and records of all persons who are required to collect such tax pursuant to section 17-49 hereinabove during reasonable business hours as shall be necessary to enable the city to determine the correctness of any report filed as required by this article, and to determine the correctness of the amount due under the provisions of this article, or to determine whether or not a report should have been filed and the amount of taxes due.

(c) The city officials designated by the city manager shall have authority to use sampling techniques and project assessments in the same manner as is provided in section 11 1.0042 of the Tax Code.

(Ord. 110.77-1 31, § 4, 1 1-8-77; Ord. No. 87-51, § 1, 8-25-87; Ord. No. 96-56, § 1, 8-27-96)

Sec. 17-52. Penalties.

(a) If any person shall fail to collect the tax imposed herein, or shall fail to file a report as required herein, or shall fail to pay to the assistant director of billing and collection, the tax, as imposed herein, when said report or payment is due, or shall file a false report, then such person shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00). In addition, such person who fails to remit the tax or violates the reporting provisions imposed by this article within the time required is liable to the city for the amount of reasonable attorney's fees and a penalty equal to fifteen (15) per cent of the total amount of the tax owed authorize by Tax Code, Section 351.004. Delinquent taxes shall draw interest at the rate of twelve (12) per cent per annum, beginning sixty (60) days from the date due, pursuant to Tax Code, Sections 156.201 and 1 11.060.

(b) In addition to the penalties imposed by subsection (a), the city attorney or other attorney acting for the city attorney may bring suit against a person who is required to collect the tax imposed in section 17-46 and who has failed to file the report or pay the tax when it is due to

enjoin the person from operating a hotel in the city until the tax is paid or the report is filed or both, as authorized by Tax Code, Section 351.004.

(Ord. No. 77-1 31, § 4, 11-8-77; Ord. No. 87-51, § 1, 8-25-87; Ord. No. 96-56, § 1, 8-27-96)

Sec. 17-53. Use of tax revenue for cultural purposes.

In order to attract tourists and visitors to the city, the city shall promote certain activities by the payment of a portion of the municipal hotel occupancy tax revenue to the Odessa Cultural Council (OCC) subject to the following regulations:

- (1) The payment shall be subject to state law.
- (2) The amount paid to OCC during the city's fiscal year for which OCC funds have

been budgeted, shall be one-seventh of the net HOT revenues collected during the last calendar year preceding the adoption of the annual city budget authorizing payment of such funds.

(3) The fund to be expended under this section shall be used only for the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms.

- (4) Other terms and conditions to be established by contract.
- (5) This section shall not repeal or amend any contracts in effect during the 1995-96 fiscal year.

(Ord. No. 88-21, § 1, 3-8-88; Ord. No. 96-56, § 1, 8-27-96)

Editor's note: Ord. No. 88-21, § 1, adopted March 8, 1988, purported to amend the code by adding provisions designated as § 17-52. Inasmuch as there already exists in the Code, provision so designated, the provisions of Ord. IVo. 88-21 have been included as § 17-53 at the discretion of the editor.

Sec. 17-54. Additional remedies.

With regard to any taxes imposed after August 30, 1993, the city attorney or other attorney acting for the City of Odessa may bring suit against a person, who is required to collect the tax ~mposed by this chapter and pay the collections over to the municipality and who has failed to file a tax report or pay the tax when due, to collect the tax not paid or to enjoin the person from operating a hotel in the municipality until the tax is paid or the report filed as provided by the court's order. In addition to the amount of any tax owed under this chapter, the person is liable to the municipality for the municipality's reasonable attorney fees and a penalty equal to fifteen (15) per cent of the total amount of the tax owed. The remedies provided by this section are in addition to other available remedies.

(Ord. No. 93-56, § 1, 9-14-93)

Sec. 17-55. Exemptions and refunds.

(a) *Exemptions.* This article does not impose a tax on those persons for whom an exemption has been provided by state or federal law.

(b) *Refund.* A state agency, as defined herein, shall pay the tax but is entitled to a refund as provided by state law.

(c) *Definitions.*

(1) *State agency.* An agency, institution, board or commission of the State of Texas other than an institution of higher education as defined in Education Code, § 61.003.

(2) *Federal government.* Any department, board, bureau, agency, corporation or commission created or wholly owned by the United States government.

(d) *Special refund rules.*

(1) A state agency may request refund for each calendar quarter for the municipal hotel tax paid directly to a hotel or the amount of municipal hotel tax reimbursed to a state employee on a state travel voucher.

(2) The city shall not compel any person to collect the HOT from the U.S. government or its employees when traveling on official business; however, in any case in which the tax has been erroneously imposed and collected, a refund may be obtained by the U.S. government as described herein.

(e) *Time limitation.* A person or agency may apply for a refund of a municipal hotel tax no later than the end of the first calendar quarter after the calendar year in which the travel occurred.

(f) *Documentation required.*

(1) Documentation must be maintained and submitted to the billing and collections department of the city to substantiate the claim, including a copy of the hotel folio, billing statement invoice, or other document, that contains the following information:

- a. Name of the hotel;
- b. Location address of hotel;
- c. Name of city hotel is located;
- d. Name of county hotel is located;
- e. Date(s) of lodging;
- f. Amount of state, municipal, and county hotel tax paid separately stated,
- g. Method of payment (travel voucher reimbursement, state credit card, state purchase order, direct billing, other); and

h, Name of employee, if tax reimbursed on travel voucher

(g) *Form.* Each claim for refund for municipal hotel occupancy tax must be filed on a form furnished by the city billing and collection department, with the required documentation attached.

(Ord. No. 96-56, § 1,8-27-96)