

CODE OF REGULATIONS

CUYAHOGA COUNTY AUDITOR



REVISED September 12, 2000

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Title

This Code of Regulations shall be known and may be cited and referred to as the “Cuyahoga County Excise Tax on Lodging of Transient Guests, Code of Regulations”.

Definitions

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

- A. **“Auditor”** means the Cuyahoga 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. **ORC 302.30**
- B. **“Board”** means the Board of County Commissioners in Cuyahoga County in the State of Ohio.
- C. **“County”** means the County of Cuyahoga, State of Ohio.
- D. **“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. **ORC 5739.01(D)(1)**
- E. **“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. **ORC 5739.01(M)**
- F. **“Lodging”** means one (1) or two (2) or more connecting rooms in which sleeping accommodations are provided for a transient guest(s).
- G. **“Person”** includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form. **ORC 5739.01(A)**.
- H. **“Premises”** includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, used in conjunction with the business engaged in by such person. **ORC 5739.01(K)**

- I. **“Rent”** means the aggregate value in money or anything paid or delivered, or promised to be paid or delivered for hotel lodging, without any deduction for the cost of labor, service, property used, interest discount paid 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 rent, or any portion thereof, 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;
 - 3. Refundable deposits, until such deposits are actually applied to rents due and owing.
- J. **“Tax”** means, except where otherwise specified, the tax levied and imposed hereby.
- K. **“Transient guest(s)”** means person(s) occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.
- L. **“Vendor”** means a person who owns or operates a hotel that furnishes lodging to guests and includes the agents and employees of such person who performs the functions on behalf of the vendor. **“Vendor”** also includes the owner, lessee, mortgagor in 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/her whereabouts or property. The vendor shall have an Ohio Retail Sales Tax Vendor License in order to operate a business pursuant to **ORC 5739.17**.

Levy of Tax; When Collectable; Exemptions; Presumption

- A. An excise tax is hereby levied and imposed upon each transaction in Cuyahoga County by which lodging is or is to be furnished by a vendor to a transient guest or guests, at the rate of three percent (3%) prior to March 1, 1993, and of four and one-half percent (4 ½%) thereafter of the rent for each such transaction.
- B. The tax applies and is collectable when the lodging is furnished, regardless of the time when the rent is paid or delivered.
- C. 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.
- D. 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 therefore.

- E. The tax does not apply to transactions for lodging furnished to representatives of the United States government which are paid directly by the Federal government; the government of any state, excluding Ohio, or any of their political subdivisions. Such transactions will qualify as exempt by filing a **Certificate of Exemption** together with the bill, statement, or invoice and copies of any checks received in payment. **Exhibit A.**

Liabilities of Vendor and Consumer

- A. The tax is imposed upon and shall be paid by the consumer to the vendor as trustee solely for the benefit of Cuyahoga 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.
- B. Each such transaction shall be reported on, and the amount of the tax applicable thereto shall be 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.
- C. 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.
- D. Within thirty (30) days after commencing business, each operator of any hotel or motel renting lodging to transient guests shall register said hotel or motel with the Auditor by means of purchasing an Ohio Retail Sales Tax Vendor License and obtaining from the Auditor 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 Cuyahoga 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.”
Exhibit B.

Returns; Due Date; Remission of Penalties; Procedure Thereon; Failure to File; Form

- A. Each vendor shall, on or before the 21st day of each month, complete and file a full return with the Auditor for the preceding calendar month on the form prescribed, showing all the information required thereon, including the amount of tax due the County from the Vendor. (See example of tax return attached. **Exhibit C**) The Bed Tax was enacted in May, 1980.
ORC 5739.024
- B. The monthly returns shall be submitted to the Auditor with payment of the amount of tax due thereon.
- C. Upon receiving the monthly returns with the proper payment, the Auditor shall promptly stamp or otherwise mark on all copies the date received and the amount of payment received.
- D. Upon application of the vendor, in writing and for good cause shown, the Auditor may extend the time for making and filing returns. Also, the Auditor may reduce or abate any and all interest and penalties that may be due hereunder.
- E. Any vendor who fails to file a complete return, postmarked on or before the 21st day of each month, shall forfeit and pay into the County Treasurer a ten percent (10%) interest and twenty-five percent (25%) penalty of the amount of the tax and such may be collected by assessment in the manner provided herein.
- F. The form of the return shall be prescribed by the Auditor.

Assessments; Liabilities of Vendor and Consumer

If any vendor collects the tax and fails to remit the same to the County as provided herein, said vendor shall be personally liable for any amount collected which was not remitted. If any vendor fails to collect the tax on any transaction subject thereto, such vendor shall be personally liable for the same. The Auditor may make an assessment against the vendor in the first case, or the vendor in the second case, as the facts may require, based upon any information in the Auditor's possession.

No assessment against a vendor shall discharge the consumer's liability to the vendor for any unpaid tax, if the consumer owes the tax.

No assessment issued against either the vendor or the consumer shall be considered an election of remedies or a bar to an assessment against the other for the tax, penalty, and interest applicable to the same transaction, provided, however, that no assessment shall be issued against any person for the tax due on a particular transaction if the tax has been paid by another.

Maintenance and Inspection of Records; Assessments; Delinquencies

- A. The burden of proof rests upon each vendor to show what part, if any, of the gross room revenue receipts are not taxable from the hotel room rents; and for such purpose each vendor shall maintain and keep complete and accurate records of said room revenue 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 daily prices for each room, as required by **ORC 3731.16**; receipts of taxes collected; copies of appropriate schedules of Federal Income Tax Returns, Ohio Sales Tax Returns, and tax returns to local municipalities having a lodging excise tax identical or substantially similar to the tax imposed hereby; exemption certificates, tax payment receipts; cash register tapes and all other pertinent documents; and
 - 2. Secondary records such as bank deposit receipts and daily books, journals, or any other records in which the vendor accumulates data, which must be supported by complete detail in which such data was accumulated.
- B. Guest or rent invoices, statements or bills, and cash register tapes for taxable rent must state separately the total taxable rent and the tax charged and/or collected. The records must also show clearly the length of stay, in terms of consecutive days for each guest
- C. All records relating to the collection and payment of the tax must be preserved by the vendor for five (5) years, unless the Auditor consents in writing to their destruction within that period, or by order requires that they be kept for a longer period. All such records no longer need to be preserved after an assessment for additional tax has been made and paid, including all penalties and interest therein, for the period involved in such assessment. A copy of such paid assessment shall be maintained for five (5) years following the period included in such assessment.
- D. All such records and documents shall be open to the County Auditor for inspection during regular business hours. The Auditor shall from time to time, review, investigate, examine and audit any and all such records to determine if the proper tax has been returned and remitted. The Auditor also has the authority to remove such records as long as proper inventory of the documentation to be removed is provided to the vendor.

1. The Auditor may interview the vendor or his/her employees and agents, and may take written statements whether or not under oath, pursuant to the power conferred by the Board of County Commissioners. **ORC 305.21**
 2. If the Auditor's investigation of such records reveals that any tax or additional tax should properly have been returned and remitted by the Vendor, the Auditor shall make an assessment of such tax or additional tax in the manner provided in paragraph F hereof.
- E. 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 the vendor's secondary record and/or reported on the vendor's tax returns filed hereunder, the Auditor 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 the Auditor's possession reasonably lead the Auditor to believe that the amount of tax required to be collected is or should be greater than the amount remitted by the vendor.

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

- G. 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. The four-year period begins on the day when the vendor is notified of the onset of an audit.
- H. 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 Auditor shall be treated as confidential by the Auditor and shall not be released 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 Cuyahoga which levies a tax pursuant to **ORC 5739.024(B)**.

Procedure Following Assessment

- A. Each assessment shall be in writing stating clearly the reasons and basis therefor.
- B. In each case of an assessment, the Auditor 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.
- C. The assessment shall become final thirty (30) days after service thereof upon the assessee. The assessee may within thirty (30) days of service of notice of assessment file with the Auditor written objection for reassessment objected to, together with reasons for such objection and documentation therefore. Filing of objection shall stay enforcement by the Auditor. The Auditor shall consider the objection and provide notice to the assessee as to the result of such consideration, along with a final assessment.

Thirty (30) days after notice of assessment, or upon notice of the result of consideration of objection by the Auditor, whichever is later, the assessment shall become final and the amount thereof shall be deemed a debt due and payable to the County. The Auditor shall cause to be filed a judgment lien in the amount of the assessment, including penalties and interest added thereto under the provisions hereof.

- D. 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 required to file returns and to remit the tax, fails for any reason to make such filing or payment, vendor's 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.

Any person(s) owing such a debt to the County under the provisions of this Resolution which debt has become delinquent, shall be liable to any action brought in the name of the County of Cuyahoga, by and through the Cuyahoga County Prosecutor for the recovery of such amount.

Sale of Entire Business.

If a vendor, liable for the tax sells the business or quits the 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. The successor to the business shall withhold a 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 Auditor showing that the taxes, interest, and penalties have been paid, or a certificate (available upon request) indicating that no taxes are due. If the purchaser of the business fails to withhold purchase money, the purchaser 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. **Exhibit D**

Refund of Taxes

- A. Whenever the amount of any tax, interest and penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the County under this Resolution, it may be refunded after providing a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded. The claim shall be on forms furnished by the Auditor and review of such claims shall be at the sole discretion of the Auditor.
- B. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereof within four (4) years of the date of payment.

Examples

The following examples are published to illustrate the hypothetical application of the tax in the particular situations:

- A. If a person engages or reserves and pays for hotel room(s) for thirty (30) or more consecutive days, on behalf of specified guest(s), the tax does not apply, irrespective of whether the room is actually occupied each day during that period.
- B. If, in example A, the Room(s) are vacated and a refund is made, or the guest pays for fewer than thirty (30) days, the tax will be imposed.
- C. If a person engages or reserves hotel room(s) for fewer than thirty (30) days, on behalf of specified guest(s), and, either during or at the end of the engagement or reservation period, extends the engagement, whether for the same or different room(s), to an aggregate of thirty (30) or more consecutive days of occupancy or the right to occupancy, the tax does not apply.
- D. If a person engages or reserves hotel room(s) for more than thirty (30) consecutive days on behalf of guest(s) who do not, in fact, have the unqualified right to occupy the room(s) for thirty (30) or more consecutive days, and does not pay thirty (30) or more consecutive days' rent, the tax applies.
- E. If a guest occupies a suite or two (2) or more connecting rooms, the tax applies to the suite or all of the connecting rooms, unless each connecting room or separate room comprising the suite is assigned a separate, regular rate for lodging, and is rented for separate lodging, in which case the tax applies only to the rent for the rooms occupied separately for lodging, and not to those occupied for other purposes. For example, if a consumer rents two (2) connecting rooms and sleeps exclusively in one while conducting business exclusively in the other, the tax will be applied only on the room used for sleeping.
- F. If lodging is provided without any compensation therefore, and with no compensating charge whatsoever in the regular rates of all other lodgings in the hotel, the tax does not apply to such complimentary lodging.
- G. If lodgings are rented one (1) or more times in any twenty-four hour period to different guest(s) or consumer(s), the tax applies to each rental.
- H. Vouchers contained in voucher books, thrift books, and coupon books, which entitle the purchaser of the books to trade at different retail establishments shall be treated as money when applied to pay for lodging and the tax shall attach to all rents paid by the use of such vouchers, using as a tax basis the money value of the coupon or voucher.

Intent

It is the intent of these rules and regulations to provide for the administration of imposing, collecting and distributing the levy of an excise tax of four and one-half percent (4 ½%) on transactions by which lodging by a hotel is or is to be furnished to transient guests as referred to and authorized by **ORC 5739.024**. Accordingly, these rules and regulations shall be construed to effectuate that purpose so as to be consistent with any requirement of law, compliance which is a prerequisite to the validity of the tax intended to be levied hereby.

Severability

If any sentence, clause, section or part of these rules and regulations, or any tax imposed as specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutional, illegality or invalidity shall affect only such clause, sentence, section or part and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of these rules and regulations. It is hereby declared to be the intention of the Board of Commissioners of Cuyahoga County that these rules and regulations would have been adopted has such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Capability of Vendor's Equipment; Vendor's Responsibility for Full Amount of Tax Levied

Notwithstanding any provision contained in this Code of Regulations, or the Resolution adopting the same, to the contrary, each vendor is permitted to collect the tax from transient guests at the rate of three percent (3%) prior to March 1, 1993 and four and one-half percent (4½%) thereafter of taxable rents; provided however, that the Cuyahoga County Hotel Lodging Excise Tax shall be stated on each rent invoice, bill statement, or other written change therefor, separately and apart from the Ohio sales tax and any similar tax imposed by a local sub-division; and provided further, that each vendor shall report monthly the total taxable rents collected during each month and pay the tax equal to three percent (3%) prior to March 1, 1993 and four and one-half percent (4 ½%) thereafter of such total taxable rents.

Settlement of Tax Fund

- A. All receipts collected from the excise tax levied hereby shall be deposited in the Undivided Hotel Lodging Tax Fund. The Board shall inform the County Auditor and County Treasurer of each political sub-division in Cuyahoga County which levies such a tax.
- B. As of March 1, 1993, one-third (1/3) of total receipts collected from the excise tax shall be appropriated to the Cleveland Cuyahoga County Port Authority for the purpose of contributing revenues for the acquisition, construction, equipping and financing of a "port authority educational and cultural facility."

- C. After the Cuyahoga County Auditor deducts the real and actual costs of administering the tax and for audit recoveries for the return to each municipal corporation or township that does not levy an excise tax on such transactions, a uniform percentage of the tax collected in the municipal corporation or in the unincorporated portion of the township for each such transaction not to exceed thirty-three and one-third percent, shall be distributed.
- D. The balance remaining in the Hotel Lodging Tax Fund shall be forthwith paid as required by law to the Cleveland/Cuyahoga Convention & Visitors Bureau, Inc.
- E. A claim for refund for taxes illegally or erroneously collected or paid, certified by the County Auditor and for which a warrant is drawn on the County Treasurer, shall be paid from the Undivided Hotel Lodging Tax Fund.

Responsibilities of Convention Bureau and County

- A. The amounts allocated herein and hereby to The Cleveland/Cuyahoga County Convention & Visitors Bureau Inc. 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 beyond the borders of the City of Cleveland and its downtown area, and, therefore, undertakes to promote the purposes and premises of this Resolution 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 Cleveland/Cuyahoga Convention & Visitors Bureau Inc. 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 Board and the County Auditor, who shall be charged with the duty of inquiry examination of the work of the said Cleveland/Cuyahoga Convention & Visitors Bureau Inc., to the end that the intent and purposes of this Resolution have been and are being satisfied.

Recognition of Local Governments Who Have Additional 3% Bed Tax

The County recognizes that the Cities of Cleveland, Beachwood, Bedford Heights, Broadview Heights, Brooklyn, Brook Park, Euclid, Fairview Park, Independence, Maple Heights, Mayfield Heights, Middleburg Heights, North Olmsted, Rocky River, Solon, Strongsville, and Westlake; and the Villages of Mayfield, Oakwood, and Orange are presently levying a hotel lodging excise tax.