

ARTICLE V. - LODGER'S TAX⁴

Footnotes:

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State Law reference— Lodgers tax act, NMSA 1978, § 3-38-15.

Sec. 36-94. - Title.

This article shall be known as and may be cited as the "Lodger's Tax Ordinance," as amended.

(Ord. No. 96-09-19.3J, § 1, 9-19-1996)

Sec. 36-95. - Purpose.

The purpose of this article is to impose a tax which will be known by persons using commercial lodging accommodations which will provide revenues for the purpose of advertising, publicizing and promoting facilities authorized in section 36-108, tourist attractions, and acquisition, construction and maintenance of tourist attractions and recreational facilities.

(Ord. No. 96-09-19.3J, § 2, 9-19-1996)

Sec. 36-96. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board means the advisory board established herein to make recommendations to the governing body, keep complete minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body.

County clerk means the county clerk for the County of Sandoval, New Mexico.

County treasurer means the county treasurer for the County of Sandoval, New Mexico.

Gross taxable rent means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

Lodging means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who, for a rent, uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at a taxable premises.

Lodgings means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

Occupancy tax means the tax on a lodging authorized by the Lodger's Tax Act.

Person means a corporation, firm, other body corporate, partnership, association or individual. Person includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. The term "person" does not include the United States of America, the State of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government, or any political subdivision of the state.

Rent means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodger's Tax Act.

Taxable premises means a hotel, apartment, apartment hotel, apartment house, lodge, lodging housing, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, RV park, tourist camp, cabin, or other premises used for lodging.

Tourist means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.

Tourist-related events means events that are planned for, promoted to and attended by tourists.

Tourist-related facilities and attractions means facilities and attractions that are intended to be used by or visited by tourists.

Tourist-related transportation systems means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events.

Vendee means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

Vendor means a person furnishing lodgings in the exercise of the taxable service of lodging.

(Ord. No. 96-09-19.3J, § 3, 9-19-1996)

Sec. 36-97. - Penalty.

Any person who violates the provisions of this article by failure to pay the tax, to remit the proceeds thereof to the county, to submit required forms and reports, or to account properly for any lodging tax proceeds pertaining hereto, shall be subject to penalties for each violation. Each month of noncompliance constitutes a separate offense.

(Ord. No. 96-09-19.3J, § 16, 9-19-1996)

Sec. 36-98. - Imposition of tax.

The board of county commissioners, pursuant to NMSA 1978, § 3-38-14 et seq., hereby imposes an occupancy tax on vendors for gross taxable rent on lodging within the county and outside of the municipal limits of all county municipalities. The amount of the tax imposed under this article is five percent of gross taxable rent.

(Ord. No. 96-09-19.3J, § 4, 9-19-1996)

Sec. 36-99. - Licensing.

- (a) No vendor shall engage in the business of providing lodging in the county who has not first obtained a license as provided in this section.
- (b) Applicants for a vendor's license shall submit an application to the clerk stating:
 - (1) The name of the vendor including identification of any person, as defined in this article, who owns or operates a place of lodging, and the name or trade names under which the vendor proposes to do business, and the post office address thereof;
 - (2) A description of the facilities including the number of rooms and the usual schedule of rates;

- (3) A description of other facilities provided by vendor or other users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car, stenographic, tailor or others, and a statement identifying the license issued, to whom issued, the authority issuing, and the period for which issued. If applicable, also the identification number provided by the bureau of revenue of the state;
- (4) The nature of the business practices of the vendor and to what extent, if any, his business is exempt from the lodger's tax;
- (5) Other information reasonably necessary to effect a determination of eligibility for such license.
- (c) The county clerk shall review applications for license within ten days of receipt thereof, and grant the license in due course if the applicant is doing business subject to the lodger's tax.
- (d) If the county clerk finds the applicant not exempt under the terms of this article, the county clerk shall, not more than ten days after receipt of the application, advise the applicant of the decision and give the reasons therefor.
- (e) An applicant who is dissatisfied with the decision of the county clerk may appeal the decision to the county commission by written notice to the county clerk of such appeal to be made within 15 days of the date of the decision on the application. The matter shall be referred to the county commission for hearing at a regular or special meeting in the usual course of business. The decision of the county commission made thereof shall be expressed in writing and be communicated in the same manner as the decision of the county clerk is transmitted. The action of the county commission adverse to the applicant may be appealed to district court, within 30 days of the date the decision is made; otherwise, the action shall be deemed final.
- (f) If the county commission finds for the applicant, the county clerk shall issue the appropriate license or other notice conforming to the decision made by the county commission.

(Ord. No. 96-09-19.3J, § 5, 9-19-1996)

Sec. 36-100. - Exemptions.

The occupancy tax shall not apply:

- (1) If a vendee:
 - a. Has been a permanent resident of the taxable premises for a period of at least 30 consecutive days; or
 - b. Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least 30 consecutive days;
- (2) If the rent paid by a vendee is less than \$2.00 a day;
- (3) To lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions;
- (4) To lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;
- (5) To clinics, hospitals, or other medical facilities;
- (6) To privately owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill;
- (7) If the vendor does not offer at least three rooms within or attached to a taxable premises for lodging or at least three other premises for lodging or a combination of these within the taxing jurisdiction.

(Ord. No. 96-09-19.3J, § 6, 9-19-1996; Ord. of 2-21-2002, § 1)

Sec. 36-101. - Collection of the tax and reporting procedures.

- (a) Every vendor providing lodgings shall collect the tax thereon on behalf of the county and shall act as a trustee therefor.
- (b) The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.
- (c) Each vendor licensed under this article shall be liable to the county for the tax provided herein on the rent paid for lodging at his respective place of business.
- (d) The vendor shall complete, sign and submit, together with the payment, the vendor's monthly CRS gross receipts tax form and the county lodger's tax report.

(Ord. No. 96-09-19.3J, § 7, 9-19-1996)

Sec. 36-102. - Duties of vendor.

The vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. Such records shall be maintained in the courthouse of the county and shall be open to inspection during reasonable hours and shall be retained for three years.

(Ord. No. 96-09-19.3J, § 8, 9-19-1996)

Sec. 36-103. - Failure to pay tax; failure to make return; computation, penalty, and notice.

- (a) If any vendor makes a return as required by this article without paying the tax due, he shall be liable for the tax and a penalty equal to ten percent thereof, but not less than a \$10.00 penalty in addition to the tax, without notice from the county with regard thereto. Any penalty so assessed shall be added to the principle amount of the tax due; the entire balance of the tax plus penalty shall then accrue interest at the rate of one percent per month. This represents an annual percentage rate of 12 percent. Interest shall be assessed 15 days after receipt of the return, and shall be computed from the date of receipt. The county treasurer will give the delinquent vendor written notice of the estimated tax penalty and interest, mailed to the vendor's local address.
- (b) If any vendor refuses or neglects to make a return and pay the tax as required by this article, the county treasurer or designee shall make an estimate based upon an examination of the vendor's books and records, or upon any information in its possession, or that may come into its period with respect to which vendor has failed to make return, and upon the basis of the estimated amount shall compute and assess the tax payable by the delinquent vendor, adding to the sum thus arrived at a penalty equal to ten percent thereof, but not less than \$10.00. Any penalty so assessed shall be added to the principle amount of the tax due; the entire balance of the tax plus penalty shall then accrue interest at the rate of one percent per month. This represents an annual percentage rate of 12 percent. Interest shall be assessed 15 days after receipt of the return, and shall be computed from the date of receipt. The county treasurer will give the delinquent vendor written notice of the estimated tax penalty and interest, mailed to the vendor's local address.
- (c) If payments are not received within 15 days of the mailing of the notice, the county treasurer may bring an action in law or equity in a court of law for the collection of any amounts due, including without limitation, penalties thereon, interest on the unpaid principle balance plus penalties at the rate of one percent per month. This represents an annual percentage rate of 12 percent. The county may attempt collection through an attorney or county attorney, and all other expenses incurred in connection therewith. Any sums so paid to an attorney or to the county attorney, and all costs and other expenses, shall accrue interest at the same rate, and in the same manner, as

interest assessed on the tax-plus-penalty, and the vendor shall be liable to the county therefor. Interest shall be computed from the date of payment to the attorney or county attorney.

(Ord. No. 96-09-19.3J, § 9, 9-19-1996)

Sec. 36-104. - Refunds and credits.

If any person believes he has made payment of any lodger's tax in excess of that for which he is liable, he may claim a refund thereof by directing to the county treasurer, not later than 90 days from the date payment was made, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The county treasurer shall allow the claim in whole or in part or may deny it. Refunds of tax and interest erroneously paid and amounting to \$100.00 or more may be made only with the approval of the county commission.

(Ord. No. 96-09-19.3J, § 10, 9-19-1996)

Sec. 36-105. - Confidentiality of return.

It is unlawful for any employee of the county to reveal to any individual other than another employee of the county any information contained in the return of any taxpayer, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the county is a party, and in which the information sought is material to the inquiry; to the taxpayer himself or to his authorized representative; and in such manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer.

(Ord. No. 96-09-19.3J, § 11, 9-19-1996)

Sec. 36-106. - County audit.

Each vendor shall be subject to an audit, at the discretion of the county treasurer, upon reasonable notice, in order to verify the accuracy of information contained in the report required in section 36-101.

(Ord. No. 96-09-19.3J, § 12, 9-19-1996)

Sec. 36-107. - Advisory board.

- (a) *Appointment of members.* The chairperson of the county board of commissioners shall appoint an advisory board of five residents of the county; two of whom are owners or operators of lodgings subject to the lodger's tax within the unincorporated areas of the county, two members who are owners or operators of industries located within the unincorporated areas of the county that primarily provide services or products to tourists, and one member who is a resident of the unincorporated area of the county shall represent the general public. The appointments shall be subject to confirmation by the board of county commissioners.
- (b) *Term.* The term for all members will coincide with the county fiscal year, July 1 to June 30. Members' terms will be staggered such that there are always three members on the board who have served for at least one year previously. All terms will be two years from appointment. Members may serve consecutive terms at the pleasure of the county commission.
- (c) *Service of members.* Members of the advisory board shall serve at the pleasure of the board of county commissioners and may be removed at anytime, with or without cause.
- (d) *Replacement of members.* Upon the death, removal, resignation, change of residence from the county or inability of a member of the board to act, a vacancy on the advisory board shall exist. This

vacancy shall be filled by appointment by the chairperson of the board of county commissioners for the unexpired term of such member, subject to confirmation by the board of county commissioners.

- (e) *Role of advisory board.* The advisory board shall make recommendations to the board of county commissioners concerning the expenditure of the occupancy tax proceeds. The advisory board shall also prepare semiannual budgets, setting forth the amount of money collected by the county treasurer, and also setting forth all expenditures made during such semiannual period.
- (f) *Open meetings.* The advisory board shall hold open meetings, pursuant to the New Mexico Open Meetings Act, and shall abide by the rules and regulations for the conduct of public meeting, as promulgated by the board of county commissioners.

(Ord. No. 96-09-19.3J, § 13, 9-19-1996)

Sec. 36-108. - Eligible uses of proceeds.

- (a) A minimum of 1½ percent of the five percent tax shall be used for the purpose of advertising, publicizing, or promoting tourist attractions in the county; as well as the county fairgrounds, exposition buildings, field houses, auditoriums, welcome centers, tourist information centers, museums, performing art facilities, convention halls, and other convention activities in the county.
- (b) The remaining 3½ percent of the occupancy tax may be used to defray the costs of:
 - (1) Collecting and otherwise administering the occupancy tax, including the performance of audits required by the Lodger's Tax Act pursuant to guidelines issued by the department of finance and administration;
 - (2) Establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities, attractions or transportation systems of the municipality, the county in which the municipality is located or the county.

(Ord. No. 96-09-19.3J, § 14, 9-19-1996)

Sec. 36-109. - Limitations on the use of proceeds.

The following portions of the proceeds from the occupancy tax shall be used only for advertising, publicizing, and promoting tourist-related attractions, facilities and events:

- (1) If the occupancy tax imposed is more than two percent and the municipality is not located in a Class A county, or the county is not a Class A county, not less than one-half of the proceeds from the first three percent of the tax and not less than one-fourth of the proceeds from the tax in excess of three percent shall be used for these purposes.
- (2) The proceeds from the occupancy tax in excess of the amount required to be used for advertising, publicizing and promoting tourist-related attractions, facilities and events may be used for any purpose authorized in NMSA 1978, § 3-38-21.
- (3) The proceeds from the occupancy tax that are required to be used to advertise, publicize and promote tourist-related attractions, facilities and events shall be used within two years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose.

(Ord. No. 96-09-19.3J, § 15, 9-19-1996)

Secs. 36-110—36-131. - Reserved.