

RESOLUTION NO. 18-190

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ERIE COUNTY, OHIO, FOR THE PURPOSE OF AMENDING THE ERIE COUNTY HOTEL LODGING EXCISE TAX CODE OF REGULATIONS

The Board of County Commissioners of Erie County, Ohio, met this 10th day of May, 2018, in regular session with the following members present:

Patrick J. Shenigo, Mathew R. Old, and William J. Monaghan.

Mr. Monaghan introduced the following resolution and moved its adoption.

WHEREAS, this Board did, by Resolution No. 84-52, adopted February 27, 1984, and by Resolution No. 96-210, adopted July 8, 1996 (collectively, the "Resolutions"), enact and levy hotel lodging excise taxes (a total of two per cent) on all transactions by which lodging in a hotel is or is to be furnished to transient guests in Erie County; and

WHEREAS, this Board enacted and levied an additional 2% in hotel lodging taxes on August 27, 2015, under Resolution No. 15-501, and amended the Erie County Hotel Lodging Excise Tax Code of Regulations the same date, under Resolution No. 15-502, bringing the total lodging tax to four percent (4%) on transactions that occur at hotels within the jurisdiction of the County; and

WHEREAS, Ohio Revised Code Section 5739.09(G) authorizes a board of county commissioners to adopt a resolution specifying that, for purposes of any lodging tax that may be imposed by the board under O.R.C. Section 5739.09 or O.R.C. Section 5739.08, "hotel", as otherwise defined in O.R.C. Section 5739.01, includes establishments in which fewer than five rooms are used for the accommodation of guests; and

WHEREAS, O.R.C. Section 5739.09(A)(1) allows for the imposition of a penalty for late payments provided that the penalty does not exceed ten percent (10%) of the amount of tax due; and

WHEREAS, O.R.C. Section 5739.09(A)(1) allows the County to retain the real and actual costs of administering the tax; and

WHEREAS, it has been determined that these rules are in need of amending; and

WHEREAS, three public hearings were held to provide information and seek public input on the recommended amendments (on April 26, May 3, and May 10, 2018); and

WHEREAS, it is the intent of the Board of Erie County Commissioners to impose this lodging tax on transactions in establishments in which fewer than five rooms are used for the accommodation of guests; **NOW, THEREFORE**,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ERIE COUNTY, OHIO:

THAT, this Board hereby authorizes, for the purpose of the Erie County lodging tax, that the definition of "hotel" will include establishments in which fewer than five rooms are used for the accommodation of guests, effective January 1, 2019; and

THAT, the lodging tax shall be collected and remitted by those establishments in accordance with the applicable provisions of the Ohio Revised Code and the rules and regulations set forth by Erie County; and

THAT, this Board of County Commissioners hereby finds and determines that all formal actions relative to the adoption of this resolution were taken in an open meeting of this Board; and that all deliberations of this Board and of its committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

Mr. Old seconded the motion for the adoption of said resolution; and the roll being called upon its adoption, the vote resulted as follows:

Roll Call: Mr. Monaghan, Aye; Mr. Old, Aye; Mr. Shenigo, Aye

Adopted: May 10, 2018

CERTIFICATE

I, Carolyn L. Hauenstein, Clerk of the Board of County Commissioners of Erie County, Ohio, hereby do certify that the above is a true and correct copy of resolution adopted by said Board under said date, and as same appears in Commissioners' Journal Volume #214.

Carolyn L. Hauenstein Clerk
Board of County Commissioners
of Erie County, Ohio

Approved by County Administrator

Peter S. Daniel
Peter S. Daniel

ERIE COUNTY

HOTEL LODGING EXCISE TAX

CODE OF REGULATIONS

AMENDED EFFECTIVE JANUARY 1, 2019

ERIE COUNTY HOTEL LODGING EXCISE TAX
CODE OF REGULATIONS

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ERIE COUNTY HOTEL LODGING EXCISE TAX

CODE OF REGULATIONS

Section 1. Title

This Code of Regulations shall be known and may be cited and referred to as "Erie County Hotel Lodging Excise Tax Code of Regulations," or "Hotel Excise Tax Code of Regulations" to the same effect.

Section 2. Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction and are the meanings of the words defined.

- (a) "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 or combination acting as a unit.
- (b) "Auditor" means the Auditor of the County of Erie, Ohio, or his appointed designee.
- (c) "Hotel" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered for a consideration to guests:
 - 1. In which five (5) or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures;
 - 2. Establishments in which fewer than five (5) rooms are used for the accommodation of guests; Or
 - 3. Establishments at which rooms are used for accommodation of guests regardless of whether each room is accessible through its own keyed entry or several rooms are accessible through the same keyed entry and in determining the number of rooms, all rooms are included regardless of the number of structures in which the rooms are situated or the number of parcels of land on which the structures are not identified in the advertisements of the accommodations as distinct establishments. For purposes of this section, two (2) or more structures are under the same ownership if they are owned by the same person, or if they are owned by two (2) or more persons the majority of the ownership interest of which are owned by the same person.

- (d) "Transient guest" means persons occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.
- (e) "Rent" means the consideration received for occupancy, including any service or other charge or amount required to be paid as a condition for occupancy, valued in money, whether received in money or otherwise; including all receipts, cash, credits, and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever, and whether received by the operator or a room marketer or another person on behalf of either of them.
- (f) "Operator" means any person that furnishes, arranges or facilitates to furnish occupancy in a hotel, including but not limited to, the proprietor of the hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee or any other capacity, a managing agent, a booking agent, a room seller or reseller, or any other agent or contractor, including a room remarketer shall be deemed to operate a hotel, or portion thereof, with respect to which such person has the rights of a room remarketer. Where the operator performs his functions through a managing agent of any type or character, other than an employee, the 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.
- (g) "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms, or space or portion thereof, in any hotel for dwelling, lodging or sleeping purposes. "Use or possession" shall include the rights of a room remarketer as described in paragraph (h) of this section. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample or display space shall not be considered occupancy within the meaning of this definition; unless the person exercising occupancy uses or possesses, or has the right to use or possess all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.
- (h) "Room remarketer" shall mean a person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to a transient guest in an amount to be determined by the room remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such person's ability or authority to reserve, arrange for, convey, or furnish occupancy, directly or indirectly, and determine rent therefore, shall be the "rights of a room remarketer". Examples of a room remarketer include, but are not limited to, an online travel company, a tour operator, and/or a travel consolidator.

Section 3. Imposition of Tax

For the purpose of providing revenue to meet the needs of Erie County, Ohio, for the use of the general fund of the County (i) in making contributions to the convention and visitors bureau operating within the County, and (ii) for the purposes described in Ohio Revised Code Section 307.679 or for the promotion of travel and tourism in the County, including travel and tourism to sports facilities, an excise tax is hereby levied on transactions by which lodging by a hotel is or is to be furnished to transient guests.

The tax is four percent (4%) on all rents paid or to be paid by the transient guest for the lodging. Said tax constitutes a debt owed by the transient guest to Erie County, which is extinguished only by payment to the operator(s) as trustee for the County, or to the County. The transient guest shall pay the tax to the operator of the hotel at the time the rent, or any portion thereof, 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 ceasing to occupy space in the hotel. The operator(s) shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging.

Section 4. Exemptions

No tax shall be imposed under this regulation upon:

- (a) Rents not within the taxing power of the County under the Constitution or laws of Ohio or the United States;
- (b) No exemption claimed under this section 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 Auditor.

Section 5. Prohibition Against False Evidence of Tax-Exempt Status

No transient guest shall refuse to pay the full and exact tax as required by this regulation, or present to the operator false evidence indicating that the lodging as furnished is not subject to the tax.

Section 6. Tax to be Separately Stated and Charged

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 said 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 County, and the operator shall be liable for the collection thereof and for the tax.

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.

Section 7. Registration

Within thirty (30) days after commencing business, each operator of any hotel renting lodging to transient guests shall register said hotel with the Auditor and obtain from him or her 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 Erie 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."

Section 8. Reporting and Remitting

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Auditor, make a return to the Auditor, on forms provided by him or her, of total rents charged and received and the amount of tax collected for transient occupancies. 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 Auditor. The Auditor may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to insure collection of the tax and he or she 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 regulation shall be held in trust for the account of Erie County until payment thereof is made to the Auditor. All returns and payments submitted by each operator shall be treated as confidential by the Auditor and shall not be released by him or her 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 Erie, or in order to comply with requirements of O.R.C. Section 149.43.

Section 9. Penalties and Interest

- (a) Delinquency. Any operator who fails to remit any tax imposed by this regulation 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) Interest. In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this regulation shall pay interest at the rate per annum prescribed by section 5703.47 of the Ohio Revised Code, on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (c) Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this regulation shall be imposed during the pendency of any hearing provided for in Section 11 of this regulation nor during the pendency of any appeal to the Board of Erie County Commissioners provided for in Section 12 of this regulation.
- (d) Abatement of Interest and Penalty. In cases where a return has been filed in good faith and an assessment has been paid within the time prescribed by the Auditor, the Auditor may abate any charge of penalty or interest or both.

Section 10. Maintenance and Inspection of Records; Destruction; Assessments; Delinquencies

- (a) The burden of proof rests upon each operator 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 operator 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 operator accumulates data, which must be supported by complete detail in which such data was accumulated.
- (b) Guests or rent invoices, statement 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 operator for three (3) 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 three (3) years following the period included in such assessment.
- (d) All such records and documents shall be open to the County Auditor, or their designee, for inspection during regular business hours. The Auditor, or designee, 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, or designee, also has the authority to remove such records as long as proper inventory of the documentation to be removed is provided to the operator.
 - (1) The Auditor, or designee, may interview the operator or his/her employees and agents, and may take written statements whether or not under oath.
 - (2) If the Auditor's, or designee's, investigation of such records reveals that any tax or additional tax should properly have been returned and remitted by the operator, the Auditor shall make an assessment of such tax or additional tax in the manner provided in Section 11 hereof.
- (e) All returns, documents, and payments submitted by each operator, all records and other documents examined, and all information or knowledge of any operator's business obtained by the Auditor, or designee, 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 Erie which levies a tax pursuant to ORC 5739.09.

Section 11. Failure to Collect and Report Tax, Determination of Tax by County Auditor

If any operator:

- (1) Fails to maintain complete records, as required hereby; or

- (2) Fails or refuses to permit the Auditor, or designee, to inspect any records; or
- (3) Refuses to permit the Auditor, or designee, 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 proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due.

As soon as the Auditor shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this regulation and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this regulation. Each Assessment shall be in writing stating clearly the reasons and basis therefore. In case such determination is made, the Auditor 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 (10) days after the serving or mailing of such notice, make application in writing to the Auditor 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 Auditor shall become final and conclusive and immediately due and payable. If such application is made, the Auditor 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 so fixed. After such hearing, the Auditor 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 Section 12. No assessment, however, shall be made or issued against an operator or consumer for any tax more than three (3) 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 three-year period begins on the day when the operator is notified of the onset of an audit.

Section 12. Appeal

Any operator aggrieved by any decision of the Auditor with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Erie County Commissioners by filing a notice of appeal with the Auditor and County Commissioners within fifteen (15) days of the serving or mailing of the determination of tax due.

The Board of Erie County Commissioners 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 of Erie County Commissioners 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.

Section 13. Actions to Collect

Any tax required to be paid by a transient guest under the provisions of this regulation shall be deemed a debt owed by the transient guest 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 such a debt to the County, under the provisions of this regulation which debt has become delinquent, shall be liable to an action brought in the name of the County of Erie, by and through the Erie County Prosecutor, for the recovery of such amount.

Section 14. Refunds

- (a) Whenever the amount of 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 regulation, it may be refunded as provided in subparagraphs (b) and (c) of this section, provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Auditor within three years of the date of payment. The claim shall be on forms furnished by the Auditor.

- (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 Auditor 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 County by filing of a claim in the manner provided in subparagraph (a) of this section, but only when the tax was paid by the transient guest directly to the Auditor, or when the transient guest, having paid the tax to the operator, establishes to the satisfaction of the Auditor 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.

Section 15. Separability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this regulation 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 regulation or any part thereof. The Erie County Commission 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, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional.

Section 16. Money Received, Where Credited

That the proceeds of the Hotel Lodging Excise Tax shall be placed in a separate agency fund entitled "Hotel-Motel Tax Fund". After deducting the real and actual cost of administering the same as determined by the Auditor and returning to each municipal corporation or township that does not levy an excise tax on hotel lodging, a uniform percentage, set at one percent of the tax collected in each such municipal corporation and the unincorporated portion of each such township from such transactions, one-half of said funds (the first 1% and the second 1%) are to be spent solely to make contributions to the convention and visitors bureau operating within Erie County. The amount of the contribution to be made to the convention and visitors bureau

shall be determined by the Board of Erie County Commissioners. The third 1% shall be utilized for the purposes described in O.R.C. Section 307.679. The fourth 1% shall be utilized for the purposes described in O.R.C. Section 307.679 and/or promote travel and tourism in the County, including travel and tourism to sports facilities. The amount of the contribution to be made for these purposes shall be determined by the Board of Erie County Commissioners. No portion of the revenue from the increase in the rate (the fourth 1%) shall be returned to the townships or municipal corporations as would otherwise be required under Division (A)(1) of Ohio Revised Code Section 5739.09.

Section 17. Duties of Convention and Visitors Bureau

The amounts allocated herein and hereby to the Convention and Visitors Bureau are so appropriated thereto on condition that the said bureau recognizes that the County's hotel and motel industry which bears responsibility hereunder for the collection of the tax hereby levied, extends to the boundaries of Erie County, therefore, undertakes to promote the purposes and premises of the resolution adopting these regulations 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.

The Convention and Visitors Bureau of Erie County, which receives funds under this regulation, shall present quarterly financial and performance reports, as well as an annual operations report, each showing its use for the funds hereby provided, to the Board of Erie County Commissioners, the Auditor and the County Administrator, who shall be charged with the duty of inquiry examination of the work of the said Convention and Visitors Bureau, to the end that the intent and purposes of the resolution adopting these regulations have been and are being satisfied.