

**PORTAGE TOWNSHIP
OTTAWA COUNTY, OHIO**

LODGING EXCISE TAX

REGULATIONS

EFFECTIVE JANUARY 1, 2009

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PORTAGE TOWNSHIP LODGING EXCISE TAX

REGULATIONS

Section 1. Title

These Regulations shall be known and may be cited and referred to as "Portage Township Lodging Excise Tax Regulations" or "Lodging Excise Tax 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) "Fiscal Officer" means the Fiscal Officer of Portage Township, Ottawa County, Ohio, or his or her appointed designee.
- (c) "Lodging" 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, in which five (5) or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. This includes but is not limited to hotels, motels, bed & breakfasts, cottages, cabins, condominiums, and vacation homes.
- (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 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 there from whatsoever.
- (f) "Operator" means the person who is proprietor of the lodging establishment, whether in the capacity of owner, lessee, mortgagee in possession, licensee, or any other capacity. 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 regulation and shall have the same duties and liabilities as his principal. Compliance with the provisions of this regulation 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 lodging establishment for dwelling, or sleeping purposes. 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) "Township" and "Portage Township" can be used interchangeably to mean Portage Township, Ottawa County, Ohio.

Section 3. Imposition of Tax

For the purpose of providing revenue with which to meet the needs of Portage Township, for the use of the general fund of the Township, an excise tax is hereby levied on transactions by which lodging is, or is to be furnished to transient guests within the unincorporated areas of Portage Township.

The tax is three percent (3%) 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 Portage Township, which is extinguished only by payment to the operator as trustee for the Township, or to the Township. The transient guest shall pay the tax to the operator of the lodging establishment 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 ceasing to occupy space in the lodging establishment. The operator 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 rents not within the taxing power of the Township under the Constitution or laws of Ohio or the United States.

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 Fiscal Officer.

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 Portage Township, and the operator shall be liable for the collection thereof and for the tax.

No operator of a lodging establishment 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) from the adoption of this resolution, or within thirty (30) days after commencing business, each operator of any lodging establishment renting lodging to transient guests shall register said establishment with the Fiscal Officer 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 lodging establishment;
- (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 Portage Township Lodging Excise Tax Regulations by registering with the Fiscal Officer for the purpose of collecting from transient guests the Lodging Excise Tax and remitting said tax to the Fiscal Officer. 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 Fiscal Officer, make a return to the Fiscal Officer, 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 Fiscal Officer. The Fiscal Officer may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to ensure 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 Portage Township until payment thereof is made to the Fiscal Officer. All returns and payments submitted by each operator shall be treated as

confidential by the Fiscal Officer 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 Ottawa, or in order to comply with requirements of O.R.C. Section 149.43. The Fiscal Officer or his/her designee may conduct such audits as are deemed necessary in order to ensure compliance with these rules and regulations and the imposition and payment of the tax. Audits are an integral part of administering the tax.

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) Fraud. If the Fiscal Officer determines that the non-payment of any remittance due under this regulation 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 paragraph (a) of this section.
- (c) 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.
- (d) 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 Trustees for Portage Township provided for in Section 12 of this regulation.
- (e) 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 Fiscal Officer, the Fiscal Officer may abate any charge of penalty or interest or both.

Section 10. Records, Inspection, Destruction

Each operator shall keep complete and accurate records of lodging furnished, together with a record of the tax collected thereon, which shall be the amount due under this regulation, and shall keep all invoices and such other pertinent documents. 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 not exempted by reason of such identity, or the nature of the transaction if exempted for any other reason. Such records and other documents shall be opened for a period of three (3) years, unless the Fiscal Officer, in writing, consents to their destruction within that period, or by any others requesting that such records be kept for a longer period of time.

Section 11. Failure to Collect and Report Tax, Determination of Tax by Fiscal Officer

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this regulation, any report and remittance of said tax or any portion thereof required by this regulation, the Fiscal Officer 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 Fiscal Officer 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. In case such determination is made, the Fiscal Officer 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 Fiscal Officer 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 Fiscal Officer shall become final and conclusive and immediately due and payable. If such application is made, the Fiscal Officer 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 Fiscal Officer 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.

Section 12. Appeal

Any operator aggrieved by any decision of the Fiscal Officer with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Portage Township Trustees by filing a notice of appeal with the Fiscal Officer and Board of Portage Township Trustees within fifteen (15) days of the serving or mailing of the determination of tax due. The Portage Township Board of Trustees 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 Portage Township Trustees 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 Portage Township. Any such tax collected by an operator, which has not been paid to Portage Township, shall be deemed a debt owed by the operator to Portage Township. Any person owing such a debt to Portage Township under the provisions of this regulation which debt has

become delinquent, shall be liable to an action brought in the name of Portage Township, by and through the Ottawa County Prosecutor, for the recovery of such amount.

Section 14. Refunds

A lodging establishment operator or transient guest may apply for a refund when transient guest stays for 30 consecutive days or more. The Fiscal Officer upon request will supply forms for said refund.

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 Board of Trustees of Portage Township 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

The proceeds of the Lodging Excise Tax shall be placed in the General Fund of Portage Township.