

## CHAPTER 3.24 TRANSIENT OCCUPANCY TAX

### 3.24.010 Short Title

This chapter shall be known as the "Uniform Transient Occupancy Tax of the Town of Truckee".

### 3.24.020 Definitions

Except where the context otherwise requires, the definitions given in this Section govern the construction of this chapter.

- (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) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes, but is not limited to, any hotel, inn, vacation home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, campground, recreational vehicle park, dormitory, public or private club, mobile-home or house trailer at a fixed location, or other similar structure or portion thereof, duplex, triplex, single-family dwelling units except any private single-family dwelling rented only incidentally to permanent occupancy or any timeshare as set out in Revenue and Taxation Code Section 7280; provided that the burden of establishing that the facility is not a hotel shall be on the owner or operator thereof.
- (c) "Occupancy" means the use or possession or the right to the use or possession of any hotel room or rooms or portion thereof, offered for rent for dwelling, lodging or sleeping purposes.
- (d) "Transient" means any person who occupies or is entitled to occupy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive calendar nights or less, counting portions of calendar days as full nights. Any such person so occupying space in a hotel is a transient until the period of thirty nights has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, an uninterrupted period of time extending both prior and subsequent to the effective date of this Chapter may be considered. Transient shall not include the owner or guest of an owner of a timeshare unit (as defined in Business and Professions Code Section 11003.5 or a membership camping contract (as defined in Civil Code Section 1812.300)
- (e) "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel, valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind of nature, without any deduction there from whatsoever except for rebates for credit card processing costs incurred by the operator and such other deductions as the tax administrator may authorize from time to time where monies received by the operator do not represent income taxable by the Town.

- (f) "Operator" means the person who is proprietor of the hotel, whether in capacity of owner, lessee, sub lessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs functions through a managing agent of any type or character other than an employee, the managing agent is an operator for the purposes of this Chapter and has the same duties and liabilities as the principal. Compliance with the provisions of this Chapter by either the principal or the managing agent is, however, considered to be compliance by both. Where multiple hotels are operated by a managing agent only one certificate shall be required, which certificate will cover all hotels operated by the managing agent.
- (g) "Tax Administrator" means the Town Manager.

#### **3.24.030 Rate**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten (10%) percent of the rent charged by the operator. This tax constitutes a debt owed by the transient to the Town which is extinguished only by payment to the operator of the hotel at the time the rent is paid. The unpaid tax is due upon the transient's ceasing to occupy space in the hotel. If, for any reason, the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax be paid directly to the tax administrator.

#### **3.24.040 Exemptions**

No tax shall be imposed upon:

- (a) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.
- (b) Any federal officer or employee when an official business.

No exemption shall be granted except a claim therefore made at the time the rent is collected, upon a form prescribed by the tax administrator.

#### **3.24.050 Collection of Tax**

Every operator of a hotel in the Town for stays of less than thirty-one (31) continuous nights shall collect the tax on the amount of rent from the occupant. This tax shall be collected on the rent charged for night one (1) through night thirty (30) of any stay unless the occupant warrants in writing before or at the inception of stay that such stay shall exceed thirty (30) continuous nights.

The lodging provider shall provide a receipt to each occupant, which receipt shall reflect both the amount of rent and the amounts of this and any other tax applicable. This tax shall be due from the occupant, and shall be collected by the lodging provide at the same time that the rent is collected. The lodging provider shall be liable for any amount of tax that he fails to collect appropriately; and must remit to the Town any amount of tax collected. No operator shall in any way advertise or state that the tax or any portion thereof will be absorbed by the operator, will be included in the rent, or refunded except as provided herein.

#### **3.24.060 Registration**

Within thirty days after commencing business, each operator of any hotel renting to transients must register the hotel with the tax administrator and obtain a "Transient Occupancy Registration Certificate" to be posted at all time in a conspicuous place on the premises. This Certificate shall state, among other things, the following:

- (a) The name of the operator; and owner, if different;
- (b) The address of the hotel;
- (c) The date upon which the Certificate was issued;
- (d) "This Transient Occupancy Registration Certificate signifies that the person named on the

face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax by registering with the tax administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting the tax to the tax administrator. This Certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this Town.”

Registrations shall be a matter of public record and the Town Clerk shall, upon the request of any person, provide a list of all registered operations within the Town.

### **3.24.070 Reporting and Remitting**

Each operator shall, on or before the first day of each month, or on the first day of the month following the close of each calendar year, as evidenced by the postmark on the return submitted. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. Any tax not immediately remitted shall be delinquent and subject to the penalties and interest provisions set forth below. The tax administrator may establish shorter reporting periods or extend the time for filing of a return for a period not to exceed thirty (30) days for any certificate holder if it is deemed necessary in order to ensure collection of the tax and further information may be required in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this Chapter are held in trust for the account of the Town until payment thereof is made to the tax administrator.

Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected or received by the Town, it may be refunded by the tax administrator. If the operator or person determines that tax has been overpaid or paid more than once, which fact has not been determined by the tax administrator such person shall have one (1) year from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The tax administrator shall approve or disapprove the claim, and notify the claimant of its action. However, in no instance, may a notice of deficiency determination be disputed until it has been collected and a claim for refund duly submitted.

Tax returns filed with the Town pursuant to this chapter, and all information contained therein regarding amounts of gross receipts, adjustments, credits, over collections, penalties, and interest shall be and remain confidential. Provided, however, that this section shall not apply to any disclosures made in conjunction with any action or proceeding of any kind relating to determination or collection of tax owed or any prosecution for violation of this chapter or any related civil or criminal action. Nor shall this section apply where disclosure is required by a court order or other legal process involving the enforcement of state or federal law. This section shall not prohibit the disclosure of statistical or cumulative information when the information provided does not disclose or identify the individual taxpayer.

(ORD 2008-03, 02-07-08)

### **3.24.080 Penalties and Interest**

- (a) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten (10%) percent of the amount of the tax in addition to the amount of the tax.
- (b) Continued Delinquency. For each subsequent thirty day period following the date on which an operator's remittance first becomes delinquent the operator shall pay a

delinquency penalty of ten (10%) percent of the amount of the tax in addition to the amount of the tax and the ten (10%) percent penalty first imposed, up to a maximum of fifty (50%) percent.

- (c) Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five (25%) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b).
- (d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and a half (1 1/2%) percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (e) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

### **3.24.090 Failure to Collect and Report**

If any operator fails or refuses to collect the tax and to make, within the time provided in this Chapter, any report and remittance of the tax or any portion thereof required by this Chapter, the tax administrator shall proceed in such manner as may be deemed best to obtain facts and information on which to base the estimate of the tax due. As soon as the tax administrator procures such facts and information as may be available to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the tax administrator shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the tax administrator 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 business. Such operator may within ten days after the serving or mailing of such notice make application in writing to the tax administrator 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 tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the 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 tax administrator shall determine the proper tax to be remitted and 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 days unless an appeal is taken as provided in Section 3.24.100.

- (a) If any person is delinquent in the payment of the amount required to be paid or in the event a determination has been made that an amount due remains unpaid, the tax administrator may, not later than three years after the payment became delinquent, give notice thereof by certified mail to all persons in the county having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property or debts in their possession or under their control at the time they receive the notice until the tax administrator consents to a transfer or disposition or until 20 days elapse after the receipt of the notice. All persons so notified shall within five days after the receipts of

- the notice advise the tax administrator of all such credits, other personal property or debts in their possession, under their control or owing by them.
- (b) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the tax administrator may bring an action in the courts of this state or any other state or of the United States in the name of the Town to collect the amount delinquent together with penalties and interest.
  - (c) If any owner and/or operator of any business or the real property upon which such business is operated, sells, transfers, assigns, leased or otherwise quits the business, and any person who takes ownership or operation of the business and/or real property upon which such business is operated shall, in escrow, or otherwise pay such amount in full. The amount to be paid shall be determined by an audit for the last fiscal year of the property being transferred conducted by the Town, less any security deposit, held by the Town. No escrow shall be allowed to close concerning any property subject to this chapter unless sufficient funds are retained in escrow to cover any delinquency and paid over to the Town from the escrow upon demand; All sums deemed due the Town at the completion of the audit shall be paid to the Town by the escrow holder upon written demand of the tax administrator. If any such owner or operator of the business and/or the real property upon which the business is operated, or any escrow holder, fails to pay, withhold, or insure the withholding of the required sum, such person shall be liable for all monies due the Town. No Town permit or entitlement of any type shall be issued to the successor, owner or operator of any transient lodging facility if transient occupancy taxes remain unpaid.
  - (d) Notice shall be recorded with the Nevada County recorder's office on every transient lodging facility within the Town of Truckee. The following notice shall appear with regard to such properties: Pursuant to the Truckee Municipal Code, if any owner or operator liable to the Town for any amount of transient occupancy tax sells, transfers or assigns the property, the purchasers or successors of such person shall, in escrow, hold sufficient funds to pay such amount in full. The amount shall be determined by audit as described in the Code. If any person fails to pay or withhold the required sum, or allows escrow to close without satisfaction in cash of the amount owed to the Town, such person shall be personally liable.
  - (e) If any amount of transient occupancy tax required to be paid to the Town under this section is not remitted or paid when due, the tax collector or his/her designee may, within three years after the amount is due, file for record in the office of the Nevada County Recorder a certificate specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the tax administrator of the owner and/or operator liable for that amount, and the fact that the tax administrator has complied with all provisions of this section in the determination of the amount required to be paid to the Town. From the date of the filing for record, the amount required to be remitted together with penalties and interest, constitutes a lien upon all real property in the county owned by the operator and/or owner, and any real property acquired by him/her at any subsequent date but before the lien expires. The lien has the force, effect and priority of a judgment lien and shall continue for 10 years from the time of filing of the certificate unless sooner released or otherwise directed.

If the tax administrator is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the Town by and any operator he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may

come into his possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly periods. Penalty and interest shall be assessed upon the amount of any determination. The tax administrator shall give to the operator written notice of his determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the operator at his address as it appears in the records of the Town. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee, or when made by statutory overnight delivery. Except in cases of failure to make a return or of fraud, every notice of deficiency determination shall be mailed within three (3) years after the twentieth (20<sup>th</sup>) day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three (3) years after the return is filed, whichever period should last expire. If any operator fails to make a return, the tax administrator shall make an estimate of the amount of the gross receipts of the operator. The estimate shall be made for the period or periods in respect to which the operator failed to make the return and shall be based upon any information which is or may come into the possession of the tax administrator. Penalty and interest shall be assessed upon the amount of any determination, as provided herein. No deficiency determination may be contested until it shall first be paid, and a claim for refund filed with the tax administrator. Matters in extenuation or mitigation of the deficiency determination must be submitted in writing at the time the claim for refund is filed.

#### **3.24.100 Appeal**

Any operator aggrieved by an decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the Town Council by filing a notice of appeal with the Town Clerk within fifteen days of the serving or mailing of the determination of tax due. The Town Council shall fix a time and place for hearing such appeal, and the Town Clerk shall give notice in writing to such operator at the last known place of business. The findings of the Town Council are final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.

#### **3.24.110 Records**

It is the duty of every operator liable for the collection and payment to the Town of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the Town, which records the tax administrator shall have the right to inspect at all reasonable times.

#### **3.24.120 Refunds**

- (a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Town under this chapter it may be refunded as provided in subsections (b) and (c) provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within one year of the date of payment. The claim shall be on forms furnished by the tax administrator.

- (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 tax administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit is allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.
- (c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the Town by filing a claim in the manner provided in subsection (a), but only when the tax was paid by the transient directly to the tax administrator, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the transient 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 a right thereto by written records showing entitlement thereto.

### **3.24.130 Actions to Collect**

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the Town. Any such tax collected by an operator which has not been paid to the Town shall be deemed a debt owed by the operator to the Town. Any person owing money to the Town under the provisions of this chapter is liable to an action brought in the name of the Town for the recovery of such amount.

**Charge for Audits and Collection of Attorney's Fees.** All transient occupancy collections by an operator shall be subject to audit by the Tax Administrator or the Administrators designee, under conditions determined by the Tax Administrator. A reasonable per hour fee equal to the Town's costs for the audit of transient occupancy tax accounts shall be charged to the owner and/or operator of the transient lodging facility where unpaid taxes are discovered as a result of the audit. If the Town is the prevailing party in litigation filed to collect taxes, penalties, and/or interest due under this chapter, the Town shall be entitled to recover reasonable attorney's fees and costs engendered by said litigation from the owner and/or operator of the transient lodging facility. The Town Attorney shall be authorized, as set forth in Government Code Section 37104 et seq. to issue subpoenas which require the production of records for audit purposes.

### **3.24.140 Violations**

Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by fine as determined by the Court. (ORD 2005-08 10-20-05)

### **3.24.150 Condition Precedent to Judicial Review of Tax Liability**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the Town or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to this chapter and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability.

(URGENCY ORD 93-15 06-03-93; ORD 93-19 07-01-93; ORD 93-07 03-23-93; ORD 2004-08 10-21-04; ORD 2009-01 10-01-09)