

ADAMS COUNTY HOTEL LODGING EXCISE TAX  
CODE OF REGULATIONS

SECTION I: TITLE

This Code of Regulations shall be known and may be cited as the *"Adams County Hotel Lodging Excise Tax Code of Regulations."*

SECTION II: DEFINITIONS

- A. "Board" means the Board of Commissioners of Adams County, Ohio.
- B. "Auditor" means the Auditor of Adams County, Ohio and any of his/her assistants designated to assist in administering and enforcing the collection of the hotel lodging excise tax herein levied and imposed.
- C. "Vendor" means individuals, a partnership, a corporation, receiver, assignee, trustee in bankruptcy, estate, firm, association, joint venture, club, society, and combinations in any form operating a Hotel establishment in Adams County, Ohio.
- D. "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, including without limitation:
  - 1. Establishments in which fewer than five (5) rooms are used for the accommodation of a guest; and
  - 2. Establishments at which rooms are used for the 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 located if the structures are under the same ownership and the structures are not identified in advertisements of the accommodations as distinct establishments. For the purposes of this section, two or more structures are under the same ownership if they are owned by the same person, or if they are owned by two or more persons the majority of the ownership interests of which are owned by the same person; and

3. Establishments that offer camping sites, recreational vehicles sites, temporary facilities such as tents, and seasonal facilities such as un-insulated cabins; and
4. Establishments that provide amenities or recreational facilities and activities in addition to sleeping accommodations as part of a package price.

E. "Return" means the Quarterly Lodging Excise Tax Return to be filed by the Vendor when submitting the ~~tax~~ collected to the Auditor.

F. "Room" means a space that provides for sleeping purposes for six (6) or fewer persons.

G. "Tax" means the lodging excise tax imposed by resolution of the Board.

H. "Transient guest(s)" means person(s) occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.

### SECTION III: EXCISE TAX COLLECTION; RETURN

- A. The ~~tax~~ is imposed upon and shall be paid by the consumer to the vendor as trustee solely for the benefit of Adams County, Ohio, and each vendor as a 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 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 the lodgings, charge the tax to the account of the consumer, which amount shall be collected to 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. The Auditor shall
1. Mail copies of this Code of Regulations to all Hotels not in compliance with it, with a letter explaining the obligations of Hotels to collect and pay the tax.
  2. Mail reminders of the obligation to collect and pay the tax to all Hotels in Adams County which are not filing Quarterly Lodging Excise Tax Returns, and the penalties for not filing, promptly after the due dates of the returns.
  3. Calculate penalties and interest on late returns, inform the vendors and collect the amounts as needed.
  4. Mail a copy of the Quarterly Lodging Excise Tax Return to each Hotel not later than 30 days prior to due date of return.
- D. The Quarterly Lodging Excise Tax Return shall be prepared by the Vendor and submitted along with the tax collected to the Auditor. Copies of the Return can be

obtained from the Auditor or found on the Auditor's website. The Auditor shall modify the return annually to specify any change in the interest rate pursuant to R.C. §5703.47 as amended from time to time.

E. The return and tax shall be submitted and paid to the Auditor quarterly on the first day of the month following the end of the reporting quarter. Returns for January, February, and March are due April 20<sup>th</sup>. Returns for April, May and June are due July 20<sup>th</sup>. Returns for July, August and September are due October 20<sup>th</sup>. Returns for October, November and December are due January 20<sup>th</sup>.

1. Returns not filed with the Auditor within ten (10) days of the due date shall incur a ten (10) percent penalty on the tax due.
2. Returns not filed with the Auditor within sixty (30) days of the due date shall incur interest at a rate not to exceed the rate per annum prescribed pursuant to R.C. §5703.47 as amended from time to time, compounded annually, to be imposed from the time the amount of tax assessed was due.
3. Upon filing a late return, the vendor shall determine the late penalty and interest and submit the tax, penalty and interest with the return. The vendor may contact the Auditor to determine the appropriate interest rate and calculation of the penalty and interest prior to submitting the return. The Auditor shall provide an effective date for the interest calculation in the event the vendor fails to personally appear to file the return and pay the tax, i.e., submits return via U.S. mail.
4. Returns due on a Saturday, Sunday, legal holiday or a day in which the office of the Auditor is closed, the tax shall be due the next business day.

- F. To the extent the vendor fails to collect the tax from the consumer upon each taxable transaction, 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 payment of the tax by the vendor or consumer reduces the liability of the other to the County to the extent of the payment.
- G. The tax is not imposed upon or shall not be paid by the consumer who presents verification of tax exempt status. Each vendor shall maintain a record of this verification by number or photo static copy.
- H. 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 the amount collected which the vendor failed to remit; or if any vendor fails to collect the tax or any consumer fails to pay the tax on any transaction subject hereto, such vendor or consumer shall be Personally liable for the same, and the Auditor may make an assessment against the vendor in the first case, or the vendor or consumer in the second case, as the facts may require, based upon information in the Auditor's possession.
- I. An assessment against a vendor shall not discharge the consumer's liability to reimburse the vendor of the tax if the latter had not paid the tax.
- J. An assessment issued against either the vendor or the consumer shall not be considered as election of remedies nor a bar to an assessment against the other for the tax applicable to the same transaction; provided, 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.

- K. The Adams County Travel and Visitors Bureau shall notify the Auditor annually by January 31<sup>st</sup> of new Hotel establishments in the area.
- L. When detennining the amount of tax to be paid for establishments described in Section II, Paragraphs D (3) and (4), Hotels offering bundled services shall establish a fair market value of their overnight accommodations, not to be less than \$40.00 per night.

#### SECTION IV: MAINTENANCE AND INSPECTION OF RECORDS

- A. The burden of proof rests upon each vendor to show what part, if any, of the gross receipts from hotel room rents are not taxable, and for such purpose each vendor shall maintain and keep complete and accurate records of rents, 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 prices per day of each room as required by R.C. 3731.16, receipts of taxes collected, copies of the appropriate schedule of federal income tax returns, Ohio sales tax returns and tax returns to local subdivisions having a hotel lodging tax identical or substantially similar to the tax imposed hereby, as filed by the vendor, exemption certificates, tax payment receipts, cash register tapes and all other pertinent documents; and
  - 2. Secondary records such as bank deposit receipts and day books, journals, and any other records in which accumulated data by the vendor, which must be

supported by complete detailed records from which such data was accumulated.

3. Guest or rent invoices, statements or bills and cash register tapes for taxable rents must have the total taxable rent and tax charged and/or collected separately stated thereon, which amounts are accumulated and recorded in the secondary record.
- B. Rent invoices, statements or bills must clearly show the length of stay in terms of consecutive days, for each guest.
- C. All such reports must be preserved for a period of four (4) years unless the Auditor consents, in writing, to their destruction within that period, or by order required that they be kept for a longer period. Provided, however, that any such records need no longer be preserved after an assessment of additional tax has been made and paid, with all penalties and interest thereon, of the period involved in such assessment, but a copy of the paid assessment shall be maintained for four (4) years following the period included in such assessment.
- D. All such records and documents shall be open during regular business hours to inspection of the Auditor who shall review, investigate, examine and audit any the records of any vendor from time to time to determine if proper tax has been returned and remitted. In connection with such investigation, he may interview the vendor, his agents, and employees and take written statements there from under oath. If his investigation of such complete records reveals that said tax or additional tax should properly have been returned and remitted by the vendor, he shall make assessment of such tax or additional tax in the manner provide in

Section V hereof. If the Auditor is satisfied that the failure to return said tax or additional tax when due was caused by unintentional or immaterial error, mistake, or omission, he shall not impose the penalty.

E. If any vendor fails to maintain complete 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 his secondary records and/or reported on his tax return, 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 on the information in his possession.
3. In the case of Hotels that provide amenities or recreation activities in addition to sleeping accommodations, determine the amount of rents attributable to sleeping accommodations using the average room rent charged by all Hotels in Adams County except those charging the highest and lowest rents.

F. The above determinations may be upon a sampling or test checks of the vendor's business activity for a represented period, or other information relating to the rental of rooms made by the vendor. The Auditor may make the same determination where the facts in his possession reasonably lead him to believe



that the amount of the tax required to be collected is or should be greater than the amount remitted by the vendor.

- G. Upon failure of the vendor to file the return when due or within 30 days of the due date, the Auditor may determine the amount of tax assessed and/or collected for the period by imposing against the vendor the amount previously reported on a prior return immediately preceding the period in which he/she failed to file a return.

#### SECTION V: ASSESSMENTS

- A. If any vendor:
1. Fails to maintain complete records, as required herein; 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 the 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 means set forth herein.
- B. The taxes so determined will be deemed to be the tax collected by such vendor from the consumer during the entire period of time under review. The Auditor shall make assessment of such amount of tax based upon such determination, less the tax paid during such period, if any, plus interest thereon at the rate not to

exceed the rate per annum prescribed pursuant to R.C. 5703.47 as amended from time to time, to be imposed from the time the amount of tax assessed should have been paid, plus a penalty often (10) percent of the amount of the assessment of the tax.

- C. 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.
- D. All returns, documents, and payments submitted by each vendor, all records or other documents examined and all information or knowledge of any of vendor's business obtained by the Auditor, shall be treated as confidential by the Auditor and the Board and shall not be released by them except upon order of the Common Pleas Court of Adams County, Ohio.

#### SECTION VI: PROCEDURE FOLLOWING ASSESSMENT; APPEALS

- A. Each assessment shall be in writing stating clearly the reasons and basis therefore, upon forms adopted by the Auditor.
- B. In each case of an assessment, the Auditor shall give to the vendor written notice thereof to be served personally or by certified mail, return receipt requested, along with a copy of the written assessment.
- C. Unless the vendor, within thirty (30) days after service thereof, files with the board a petition for reassessment in writing addressed to the Board and verified under oath by the vendor or his duly authorized agent having knowledge of the facts, and setting forth with particularity the items of assessment objected to,

together with the reasons for such objection, the assessment shall become final and whereupon the Board shall cause to be filed a civil action in the name of the Board for judgment in the amount of the assessment, including penalties and interest added thereto under the provisions hereof.

- D. When a petition for reassessment is timely **filed**, the Board shall assign a time and place for hearing the same and shall notify the vendor thereof by certified mail.
- E. Notice of the decision of the Board upon petition after hearing shall be served upon the petitioner by certified mail and deposited in the United States mail on the date of entry of decision in its journal.
- F. If aggrieved by the decision of the Board, the petitioner may appeal to the Common Pleas Court of Adams County pursuant to R.C. 307.56.
- G. When the merits of the assessment or any part thereof are finally adjudicated, the Auditor shall proceed to follow such judgment and shall collect the assessment if so warranted.
- H. All monies collected upon assessment including penalties and interest thereon shall, when received by the County, be considered as revenue arising from the tax.

#### SECTION VII: LIABILITY OF OFFICERS AND AGENTS OF VENDOR

If any person, other than an individual required to file a return and remit the tax, fails for any reason to make such filing or **payment**, its officers, partners, or managing agents, or employees having control or supervision of, or charged with the responsibility of filing returns, and making payments of the 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. Such liability may be collected by assessment in the manner provided herein.

**SECTION VIII: SALE OF ENTIRE BUSINESS; SUCCESSOR LIABLE FOR TAXES AND PENALTIES DUE**

If the vendor liable for the tax sells the business or quits the business, the taxes, interest and penalties imposed hereby on taxable rents 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 the selling or quitting the business. His successor shall without a sufficient amount of the purchase price 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 indicating that no taxes are due. If the purchaser of the business fails to withhold purchase money, he 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.

**SECTION IX: REFUND OF TAXES ILLEGALLY OR ERRONEOUSLY PAID**

- A. A written claim for refund of taxes illegally or erroneously paid (or paid on an illegal or erroneous assessment where the vendor has not reimbursed himself from the consumer) may be filed in writing with the Auditor for a vendor within ninety (90) days from the date vendor ascertains that the payment was illegal or erroneous, but not later than four (4) years from the date of such payment.
- B. Such claim must show that the tax was remitted to the Auditor and that if it was collected from the consumer, the vendor has either reimbursed himself from the consumer or will hold such refund in trust for the benefit of the consumer.

- C. The Auditor shall promptly determine the amount of the refund due (adding thereto interest at a rate not to exceed the rate per annum prescribed pursuant to R.C. 5703.47 as amended from time to time) and whether an unpaid liability for tax against the vendor for the payment of tax currently exists, in which case, such refund, if allowed, plus interest, or to the extent allowed, shall be applied against such current liability to the full extent of the latter. The Auditor shall certify the excess amount of refund allowed or the full amount, as the case may be, and shall draw his warrant of certified amount on the County Treasurer in favor of the vendor. The County Treasurer shall pay such amount from any monies to the credit of the hotel lodging excise tax account of the County Undivided General Tax Fund.
- D. If however, the Auditor's decision on a claim for a refund is to award less than the full amount claimed, his decision shall be treated in the same manner as an assessment under SECTION V hereof and the aggrieved vendor and the County shall have all the rights and remedies, and duties as set forth in said SECTION V as upon assessment; but the Auditor shall withhold his certification until the merits of the claim have been fully adjudicated.

#### SECTION X: CAPABILITY OF VENDOR'S EQUIPMENT

Vendors using hand billing methods or having electric equipment with a capability to record no more than one tax on a rent invoice, bill statement or other written charge will need to make provisions to record all taxes on each, in order to be in compliance with this Regulation and to have available all pertinent information (SECTION IV (A)(3)). However, when the

vendor upgrades or replaces **equipment**, the same shall have the capability to separately charge and designate each separate tax imposed as well as other required information.

SECTION XI: MISCELLANEOUS

- A. If an individual engages or reserves, and pays for hotel room(s) for thirty (30) consecutive days or more for specified guest(s), the tax does not apply. If the room(s) is/are vacated in fewer than thirty (30) **days**, the tax applies.
- B. If an individual engages or reserves hotel room(s) for fewer than thirty (30) days for specified guest(s) and during or at the end of the engagement or reservation period extends the engagement of the room(s) whether same or different room(s) for thirty (30) days or **more**, without interruption of occupancy or the right to occupancy, the **tax** does not apply.
- C. If an individual engages or reserves hotel room(s) for more than thirty (30) consecutive days for guest(s) who nevertheless, may not, in fact, have the right to occupy the room(s) for thirty (30) or more consecutive **days**, the tax applies.
- D. If a guest occupies one room for fewer than thirty (30) days both for lodging and business purposes, the tax applies.
- E. If a guest occupies a suite of two or more connecting rooms, the tax applies to the suite or all the connecting rooms unless each connecting room, or separate room comprising the suite, is regularly assigned a rate for lodging and rent for a separate lodging, in which case the tax applies only to the rent for the rooms so occupied for lodging, not to those occupied for other purposes.
- F. Vouchers contained in voucher books, thrift books and coupons 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.

- G. If lodging is rented one (1) or more times during in any twenty-four hour period to different guests or consumers, the tax applies to each rental.
- H. If a sleeping space is designated to accommodate six (6) or more persons, i.e., barracks, dormitory or hostel, this tax does not apply.

A RESOLUTION TO AMEND VARIOUS PROVISIONS OF THE LODGING EXCISE TAX  
RESOLUTION PASSED ON FEBRUARY 23, 1998.

The Board of Adams County Commissioners move and affirm on this \_\_\_\_ day of \_\_\_\_\_, 2012, by a vote of the majority the following resolution:

The Board amends Paragraph Two of the Resolution enacting a ~~three~~ percent lodging excise tax for Adams County passed on ~~February~~ 23, 1998. Paragraph Two shall read as follows:

2. The excise tax shall be wholly used for the establishment, salaries and operation expenses of the Adams County Travel and Visitors Bureau less a fee to the Auditor for administering and collecting the tax in the amount of ~~three~~ (3) percent of the collected money which the County will retain and less ten (10) percent of the collected money to be paid to each municipality or township in which the revenue is collected in proportion to the monies collected in said municipality or township. These monies shall not be used for any other purpose.

The Board further revokes Paragraph ~~Three~~ in its entirety.

The Board elects the Adams County Auditor as the administrator, collector and enforcer of the lodging excise tax.

The Board has revised the Code of Regulations for the Adams County Hotel Lodging Excise Tax as attached hereto. The Board approves and adopts the same.

Said amendment to be effective \_ \_ \_ \_ \_ 1, 2012.

So moved by \_\_\_\_\_ ; seconded by \_\_\_\_\_

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