

# **TRANSIENT OCCUPANCY TAX ORDINANCE**



# SIERRA COUNTY CODE: CHAPTER 5.20 TRANSIENT OCCUPANCY TAX

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# SIERRA COUNTY CODE: CHAPTER 5.20 TRANSIENT OCCUPANCY TAX

## 5.20.010 Definitions

For the purposes of interpreting this chapter, the following definitions are intended to be controlling:

- (a) "County" means the County of Sierra, a political subdivision of the State of California.
- (b) "Day", unless otherwise specified, means calendar day.
- (c) "Delinquency" means the failure to do any act required to be done pursuant to this chapter, at the time required by this chapter.
- (d) "Lodging" shall mean any building, portion of a building, reserved outdoor space, or other premises or area rented for use by transients for overnight accommodations. A "lodging" shall refer to the following premises, including but not limited to: motel, hotel, inn, tourist home, vacation home rental property, bed and breakfast, rooming house, apartment house, mobile home park, recreational vehicle park, campground, or parking area, or any property rented to a "transient" as defined below. (Ord. 834, eff. 4/16/96, prior Ord. 377, 786, 807)
- (e) "Occupancy" means the use, or the right to use, any lodging.
- (f) "Operator" means the person who is proprietor of the lodging whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or in any other capacity. Where the operator performs his duties through a contracted managing agent of any type or character other than that of an employee, the managing agent shall also be deemed to be an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. If the contract between the operator and the managing agent so states, the managing agent shall be solely responsible for the duties and liabilities of the operator. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both. (Ord. 834, eff. 4/16/96)
- (g) "Person" shall mean 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.
- (h) "Rent" means any fee, charge, or other valuable consideration received by an operator as gross proceeds paid by a transient (defined below) for lodging. The "rent" shall be valued in money, whether it is received in money or in-kind goods or services. "Rent" shall include all services of any kind or nature prior to any deduction for any reason whatever.
- (i) "Tax" means the transient occupancy tax imposed by this chapter.
- (j) "Tax Collector" means the Tax Collector of the County of Sierra.
- (k) "Transient" means any Person having occupancy of a lodging for a period of thirty (30) consecutive calendar days or less regardless of the form of agreement, license, permit or entitlement. Any person actually occupying a lodging shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing, between the operator and the occupant, providing for a longer period of occupancy.

(Ord. 807, eff. 10/07/93, prior 786, 377)

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### **5.20.020 Ten Percent Tax Imposed**

For the privilege of occupying a lodging within the unincorporated areas of the County, each transient shall pay a tax in the amount of ten percent (10%) of the rent charged. This tax constitutes a debt owed by the transient to the County and that debt can be satisfied only by payment in full to the operator or to the County. Upon payment of the tax to the operator, the tax constitutes a debt owed by the operator to the County. (Ord. 834, eff.4/16/96, prior 377, 659, 786, 789)

### **5.20.030 Payment Schedule**

The transient shall pay the tax to the operator of the lodging at the time the rent is paid. If the rent is paid in installments, the proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's termination of the lodging. The Tax Collector may, at the Tax Collector's sole option, require that the tax be paid directly to the Tax Collector by the transient. (Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.040 Exemptions**

No tax shall be imposed upon the following transients:

- (a) Any person, or upon the privilege of any occupancy, if it is beyond the power of the County to impose the tax provided in this chapter;
- (b) Any officer or employee of a foreign government who is exempt by reason or express provision of federal law or international treaty;
- (c) Employees of federal, state, county and other governmental entities shall not be exempt from the payment of this tax.
- (d) No exemption of transients shall be granted except upon a claim for exemption made at the time rent is collected, and under penalty of perjury, upon a form prescribed by the tax collector.
- (e) No occupancy of the following classifications of lodgings shall be subject to the tax:
  - 1. An "organized camp" as defined in Section 18897 of the California Health and Safety Code.
  - 2. Housing operated by or used exclusively for religious, charitable or educational purposes by any organization which has obtained exemption from property taxes under the laws of California for the period the tax would otherwise be imposed.
  - 3. Any State campground operated by the State government. (Concessionaires operating State campgrounds are subject to the tax).

(Ord. 972 eff. 7/1/06, prior Ord. 377, 383, 786)

### **5.20.050 Operator Duties**

Each operator shall collect the tax imposed by this chapter at the same time that the rent is collected from the transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive from the operator a receipt for payment of tax. Failure to impose or collect the tax shall not relieve the operator from the obligation to pay the tax due under this chapter. No operator of a lodging 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 provided in this chapter. (Ord. 786, eff. 7/18/92, prior Ord. 377)

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### **5.20.060 Registration of Operators**

Each operator of a lodging located within the unincorporated area of the County shall register the lodging with the Tax Collector within thirty (30) days after commencing business. The Tax Collector shall provide the operator a "Transient Occupancy Registration Certificate" which shall be posted at all times in a conspicuous place at the lodging. The certificate shall include, but is not limited to, the following information:

- (a) The name of the operator,
- (b) The address of the lodging,
- (c) The date upon which the certificate was issued,
- (d) A statement to the effect that the certificate means that the operator has registered for the purpose of collecting and remitting the tax and that the certificate is not to be construed as a permit or authorization for any other purpose.

(Ord. 786, eff. 7/18/92, prior Ord.. 377,383)

### **5.20.070 Reporting and Remitting**

- (a) Each operator shall make a report to the Tax Collector, on forms provided by the Tax Collector, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter or longer reporting period which may be established by the Tax Collector.
- (b) The report shall include the total rents charged, total rents from transient occupancy, the amount of tax collected for transient occupancy and any further information required by the Tax Collector. The Tax Collector may establish shorter, longer or other reporting periods for any certificate holder if the Tax Collector deems it necessary or expedient in order to ensure collection of the tax.
- (c) At the time the report is filed, the full amount of the tax collected shall be paid to the Tax Collector. Returns and payments are due immediately upon cessation of business for any reason.
- (d) All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the County until payment of the tax is made to the Tax Collector.

(Ord. 834, eff. 4/16/96, prior Ord. 377, 786)

### **5.20.075 Payment by Mail**

A payment shall be deemed received on the date shown by the post office cancellation mark stamped upon the envelope containing the remittance. (Ord. 834, eff. 4/16/96)

### **5.20.080 Original Delinquency**

Any transient who fails to pay, and any operator who fails to collect or fails to remit to the Tax Collector any tax imposed by this chapter within the time required, shall pay a penalty of ten percent (10%) of the amount of the tax owed in addition to the amount of the tax. (Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.090 Continued Delinquency**

Any person who fails to pay, and any operator who fails to collect or fails to remit to the Tax Collector any tax imposed by this chapter on or before a period of thirty (30) days following the date on which the payment first became delinquent, shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed.

(Ord. 786, eff. 7/18/92, prior Ord. 377)

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### **5.20.100 Fraud**

If the Tax Collector determines that the non-payment of any sum due under this chapter is attributable to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added to the tax in addition to the penalties stated in Section 5.20.090 and 5.20.100. (Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.110 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 percent (1%) per month or fraction of a month on the amount of the tax, exclusive of penalties, from the date on which the payment first became delinquent until paid. (Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.120 Penalties Merged with Tax**

Every penalty imposed and such interest as accrues under the provisions of this chapter shall become a part of the tax required to be paid. (Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.130 Failure to Collect or Report**

- (a) **Tax Collector to Estimate Tax Due:** In the event that any operator fails or refuses to collect the tax imposed by this chapter, or to make, within the time provided in this chapter, any required report or any payment of the tax or any portion of the tax required by this chapter, the Tax Collector may make an estimate of the tax due. In making the estimate, the Tax Collector shall proceed in the manner the Tax Collector deems appropriate to obtain facts and information on which to base an estimate of the tax due. In the absence of information which the Tax Collector deems most appropriate, it shall be deemed appropriate for the Tax Collector to estimate the tax by multiplying the number of days in the reporting period by the estimated number of lodging units customarily available for rent by the operator and then multiplying such resultant number by the estimated average rent for the subject lodging units or similar lodging units and thereafter multiplying that resultant number by the tax rate. The foregoing shall not limit the Tax Collector in estimating the tax due but if utilized shall in and of itself be deemed reasonable.
- (b) **Notice of Tax Due:** The Tax Collector shall proceed to determine and assess against the operator the tax, interest, and penalties due as provided for by this chapter. The Tax Collector shall give a notice of the amount so assessed by mail or personal service addressed to all persons so assessed, at their last known addresses.
- (c) **Tax Is Final If Hearing Not Requested:** The operator may make application in writing to the Tax Collector for a hearing on the amount assessed within ten (10) calendar days after personal service of any notice of taxes or within fifteen (15) days from the date of mailing of any notice of taxes due. 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 Collector shall become final and conclusive and shall be immediately due and payable. (Ord. 786, eff. 7/18/92, prior Ord. 377)
- (d) **Separate Trust Account:** The Tax Collector may require the Operator to establish a separate trust account for deposit of the taxes as they are collected. The bank account shall be established in the ownership of Sierra County. (Ord. No. 834, eff. 4/16/96)

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### 5.20.140 Appeals Process

- (a) **Hearing and Dispute Resolution:** In the event that an operator applies for a hearing within the time prescribed, the Tax Collector shall give at least fifteen (15) days written notice to the operator of the time and place of the hearing by mail or at least ten (10) days notice if by personal service. Such hearing may be held at any time within sixty (60) days of receipt of application for the hearing by the Tax Collector. At the hearing, the operator may appear and offer evidence why the specified tax, interest, or penalties should not be so established.
- (b) **Determination of Tax:** Within thirty (30) days after the hearing, the Tax Collector shall determine the proper tax to be remitted and shall give written notice to the person by personal service or certified mail of the determination and the amount of the tax, interest, and penalties. The total due shall be payable fifteen (15) days from mailing or serving of notice unless an appeal is made as provided in section 5.20.140(c).
- (c) **Appeal from Initial Hearing:** Any operator aggrieved by any decision of the Tax Collector with respect to the amount of the tax, interest, or penalties may appeal to the Sierra County Uniform Appeals Committee by filing a written notice of appeal with the County Clerk within fifteen days of personal service or twenty (20) days from the date of mailing of the determination of tax due. The appeals procedure and the rules governing the hearing(s) shall be consistent with the Sierra County Uniform Appeals Procedure specified in Sierra County Resolution No. 90-272, as amended. Any operator or the Tax Collector, dissatisfied with the results of the determination of the Uniform Appeals Committee may appeal to the Sierra County Board of Supervisors pursuant to the Sierra County Uniform Appeals Procedure. Any determination on the matter by the Sierra County Board of Supervisors shall be deemed final. No appeal may be taken without first having completed the Initial Hearing process set forth in 5.20.140(a).
- (d) **Limitation of Issues on Appeal:** The issues on appeal shall be limited to:
1. Operator named on the tax bill is not correct.
  2. Estimated tax is based on incorrect number of units.
  3. Estimated tax is based on incorrect lodging rates.
  4. Estimated tax is based on incorrect occupancy rates.
- (Ord. 786, eff. 7/18/92, prior Ord. 377)
- (e) **Payment of Tax a Condition of Appeal:** After the determination of an amount of tax due from any operator has been made following an Initial Hearing as specified in 5.20.140(a) above, an operator must pay the tax as specified in the notice as a condition precedent to filing an appeal. Failure to pay such tax, together with penalties and interest thereon, if any, shall result in the appeal being denied. In the event that it is ultimately determined that the whole or any part of the tax, interest and penalties was not due, the operator shall be entitled to a full refund of all the amounts paid but determined not to be due together with interest at the rate prescribed by *Revenue & Taxation Code* 5151. The County may retain without interest those funds ultimately determined to be due to the County pursuant to this chapter.  
(Ord. 834, eff. 4/16/96, prior Ord. 377, 786)

### 5.20.150 Records and Audits

- (a) It shall be the duty of every operator liable for the collection and payment to the County of any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records that may be necessary to permit verification of the amount of the tax. As a minimum, the records deemed necessary for this verification shall be relevant income tax

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information, a chronological listing of transients, cash journal, or other means of summarizing the operator's quarterly revenue, supported by a file or other record of sequential registrations, which may with reasonable effort, be identified with the revenue summary, banking records for operator's business related to rental income and expenses including bank statements, deposit records, checks and check stubs, journals and general ledger, income and expense statements and balance sheet. These records shall be available, at all reasonable times, for audit by the tax collector or the Tax Collector's designated representative.

- (b) The Tax Collector or a designated representative may conduct audits of the records in order to verify compliance with the requirements of this chapter. The operator's records and the auditor's records shall be confidential records not subject to public disclosure with the following exceptions:
  - 1. As necessary in the performance of official duty pursuant to this chapter
  - 2. In the course of any proceeding, hearing, or litigation involving the existence or amount of the tax liability of the operators
  - 3. Upon the written consent of the operator or his authorized representative.
- (c) When an audit results in additional payments due to the county, the operator shall be notified of the amount due, including any applicable penalties and interest and the total shall be due and payable immediately.
- (d) Any operator dissatisfied with the audit results may file for a hearing and proceed with the appeals process, all as set forth in section 5.20.140 (a) through (e) above.

(Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.160 Refund by Written Claim**

The amount of any tax, penalty, or interest may be refunded if it has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the County under this chapter. A written claim for refund must be filed with the Tax Collector within three (3) years of the date of payment stating, under penalty of perjury, the specific grounds upon which the claim is founded. The claim shall be on a form provided by the Tax Collector.

- (a) An operator may obtain a refund, or take as a credit against taxes collected and paid, the amount overpaid, paid more than once, or erroneously or illegally collected or received, or when it is established in a manner prescribed by the Tax Collector that the person from whom the tax has been collected was not a transient or upon any other facts or circumstances the Tax Collector deems relevant. However, neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the occupant or credited to rent subsequently payable by the occupant to the operator.
- (b) A transient may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the County, but only when the tax was paid by the transient directly to the Tax Collector, or when the transient having paid the tax to the operator establishes to the satisfaction of the Tax Collector that the transient has been unable to obtain a refund from the operator who collected the tax.
- (c) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records reasonably proving that the claimant is entitled to the refund.

Ord. 786, eff. 7/18/92, prior Ord. 377)

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### **5.20.170 Recording Certificate of Lien**

The Tax Collector may record a certificate of lien in the office of the Sierra County Recorder, within three (3) years after the amount required to be paid to the county under this chapter is not paid when due. The certificate shall specify the amount of tax, penalties and interest due, the name and address as it appears on the records of the Tax Collector of the operators liable for the tax and the fact that the Tax Collector has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid together with penalties and interest constitutes a lien upon all real and personal property in the county owned by the operator or afterwards acquired by operator prior to the expiration of the lien. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the certificate unless sooner released or otherwise discharged. The lien may be extended for two additional ten year periods by re-recording the original lien. The lien may be recorded in any other county in which the operator may have property. (Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.180 Priority and Lien of Tax**

The amounts required to be paid by any operator under this chapter with penalties and interest shall be satisfied first in any of the following cases:

- (a) Whenever the person is insolvent,
- (b) Whenever the person makes a voluntary assignment of his assets,
- (c) Whenever the estate of the person in the hands of the executors, administrators or heirs is insufficient to pay all the debts due from the deceased,
- (d) Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this chapter are levied upon by process law.
- (e) Whenever a lien recorded hereunder is senior to other claimant interest.

(Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.190 Tax Collector Remedies**

The Tax Collector may utilize any remedy available for the collection of taxes to enforce collection of the tax under this chapter, including seizure and sale (Revenue and Taxation Code ' 2951 et seq.). 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 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 money to the County under the provisions of this chapter shall be liable to an action brought by the Tax Collector in the name of the County of Sierra, as plaintiff, for the recovery of the tax, penalties and interest and costs of collection, including but not limited to attorneys' and County Counsel's fees. (Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.200 Change in Ownership**

When ownership of a lodging is transferred, the following duties arise:

- (a) Duty of transferor (seller). Prior to a change of ownership of a lodging, the transferor or operator of the lodging shall give written notice to the Tax Collector of the sale no later than fifteen days before the close of escrow or the transfer of title. The transferor shall request and complete a final transient occupancy report form and pay upon close of escrow or upon delivery of title or transfer, whichever first occurs, all taxes, penalties and interest due in addition to any unsecured property taxes which are a statutory lien against the transferor.

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- (b) Duty of transferee (buyer). Prior to the change in ownership of a lodging, the transferee or prospective operator of the lodging shall give written notice to the Tax Collector of the sale no later than fifteen (15) days before the close of escrow or the transfer of title. The transferee shall retain from the purchase price the amount for which the transferor is liable until the transferor produces a certificate from the Tax Collector stating that the taxes have been paid. If the tax is not paid as provided in this chapter, the Tax Collector shall request the retained amount from the transferor. The transferor shall pay the request within ten (10) days.
- (c) Effect of notice. If proper notice is given by the parties to the transfer of ownership of a lodging, an audit may be performed by the Tax Collector in order to determine any tax liability of the transferor prior to the change of ownership. If proper notice was given, the county will release the transferee from any tax liability arising prior to the change of ownership, even if no audit was conducted.
- (d) This section shall be deemed constructive notice to all new owners of lodgings that they shall assume liability for all unpaid taxes when the Tax Collector is not properly notified as set forth in this section.

(Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.210 Violation a Misdemeanor**

- (a) In addition to any civil remedy for the collection of taxes, any person violating any of the provisions of this chapter is guilty of a misdemeanor and shall be punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a period of not more than six months or by both fine and imprisonment.
- (b) Any operator or other person liable under the provisions of this chapter who fails or refuses to register as required in this chapter, or who fails or refuses to furnish any return required to be made, or fails or refuses to furnish a supplemental return or other data required by the Tax Collector, or who renders a false or fraudulent return or claim is guilty of a misdemeanor and is punishable as set forth in subsection (a) of this section. Any person required to make, render, sign, or verify any report or claim, who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as set forth in subsection (a) of this section.

(Ord. 786, eff. 7/18/92, prior Ord. 377)

### **5.20.220 Civil Remedies**

In addition to any and all other remedies provided herein, the Tax Collector may utilize any and all civil remedies available to the Tax Collector at law or in equity not otherwise prohibited by law or inconsistent with the provisions of this chapter. (Ord. 786, eff. 7/18/92)

### **5.20.225 Implementation Date for Reserved Outdoor Space**

The Transient Occupancy Tax shall be applied to reserved outdoor spaces, including but not limited to recreational vehicle park, campground, or parking area, effective January 1, 1993.

(Ord. 792, eff. 9/5/92)

### **5.20.230 Severability**

If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are hereby declared to be severable.

(Ord. 786, eff. 7/18/92)