

COUNTY OF ELK

**HOTEL ROOM RENTAL TAX
ORDINANCE 2020-01**

EFFECTIVE

JANUARY 21, 2020

**RULES
&
REGULATIONS**

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HOTEL ROOM RENTAL TAX

PART 1

GENERAL

I. Purpose

The purpose of these Rules & Regulations is to establish standards for the following:

- A. Collection of the Hotel Room Rental Tax by the Operators / Booking Agents of Hotels within the geographic boundaries of the County of Elk.
- B. Remittance of the Hotel Room Rental Tax by the Operators / Booking Agents to the Elk County Treasurer ("Treasurer"); and,
- C. Official reporting procedures and forms to be used by the Operators / Booking Agents and other relevant Rules & Regulations concerning the collection of the Hotel Room Rental Tax.

II. Objective

These Rules & Regulations are designed to establish a uniform practice and procedure for the imposition and collection of the Hotel Room Rental Tax. The Rules & Regulations are intended to provide the guidelines necessary to assist the Operators / Booking Agents in determining which Patrons are subject to the Hotel Room Rental Tax and the amount due by each Patron. They also establish the official forms, reporting, and remittance of the Hotel Room Rental Tax to the Treasurer, as well as general collection procedures.

III. Definitions

All terms used in the Rules & Regulations shall have the same definitions as defined in Section 3 of Ordinance Number 2020 - 01, known as the Hotel Room Rental Tax Ordinance.

PART II

RULES & REGULATIONS

I. IMPOSITION OF TAX

- A. Tax Rate: A five percent (5%) tax is imposed on the Consideration received by each Operator / Booking Agent of a Hotel within Elk County from each transaction of renting a Room or Rooms to accommodate Transients.
- B. Collection of Tax by the Operators / Booking Agents: The Hotel Room Rental Tax shall be collected by the Operator / Booking Agent of each Hotel, at the time of the Transaction.
- C. Effective Date: The Hotel Room Rental Tax shall be applicable to all transactions, which occur on, or after January 21, 2020.

II. HOTEL OPERATOR REGISTRATION

Within (30) days after commencing business, each Operator / Booking Agent of a Hotel shall register with the Treasurer, by completing the Registration Application provided by the Treasurer.

The Treasurer shall issue a **Certificate of Authorization** to the Operator / Booking Agent which must be posted on the premise of the Hotel at all times.

III. ITEMS SUBJECT TO TAX

- A. Room Occupancy
The Occupancy of any Room, for Consideration, having a least one bed or sleeping accommodation, is subject to the Hotel Room Rental Tax. This shall include any group or suite of Rooms in which a patron has occupancy, at least one of which has at least one bed or other sleeping accommodation, and between which there is direct access by any means including a doorway or inside hallway.
- B. Room Occupancy Price Which Includes Meals
When the amount charged by a hotel operator / booking agent for occupancy includes the price of any meals all of the consideration attributable to the room occupancy shall be subject to tax.

IV. PERMANENT RESIDENT

A. General

The Hotel Room Rental Tax shall not be imposed for a Permanent Resident. A Permanent Resident is a person who has occupied or has the right to occupancy of a room or rooms in a hotel as a Patron for a period exceeding THIRTY (30) consecutive days. The Patron's status as a Permanent Resident becomes effective on the expiration of the thirtieth consecutive day of occupancy at the same Hotel and continues thereafter so long as the Patron's occupancy remains continuous and uninterrupted at the same Hotel.

B. Guidelines for Implementation

A rental period, for the purpose of this subsection, is a period of time (day, week, month or the like), during which, under and subject to terms of a legally enforceable contract, a Patron has a continuous right to occupy a Room or Rooms in a Hotel and is legally bound to pay Consideration. (In absence of evidence to the contrary, it is presumed that a rental period runs from the date of first occupancy or first payment of Consideration to the date on which a subsequent payment or Consideration is due.) A mere statement of intention to occupy or to permit occupancy, on the part of a Patron or Operator / Booking Agent, or both does not create a rental period unless the period in question is the subject of a legally enforceable contract.

The Occupancy or right of Occupancy must be for thirty (30) consecutive days. A Patron who merely has the right to use a Room or Rooms on intermittent days or a week or month is not qualified to become a Permanent Resident, even though the Patron cumulatively occupies a Room for a period exceeding thirty (30) days.

A Patron may only retain the status of Permanent Resident if Occupancy is uninterrupted. A Permanent Resident who breaks the consecutive and continuing occupancy loses the status of Permanent resident and will be considered a Transient and subject to the Hotel Room Rental Tax. A Patron can resume the status of Permanent Resident only after thirty (30) consecutive days of occupancy.

If a Permanent Resident transfer from one Hotel to another, even though both Hotels are owned and/or operated by the same operator/booking agent, occupancy **has been interrupted**. If a Permanent resident changes rooms within the same Hotel, continuous occupancy **has not been interrupted**, for the purpose of the Permanent Resident exemption.

V. EXEMPTIONS

A. Permanent Residents

A Permanent Resident, as the term is defined in the Ordinance, is exempt from the Hotel Room Rental Tax in accordance with these Rules & Regulations.

B. Requests for Exemptions

Any other request for exemption from payment of the Hotel Room Rental tax liability based upon Federal, State, or Local statutory authority or other proper entitlement shall be reviewed by the Operator on a case by case basis to determine the nature and extent of the requested exemption and be listed accordingly pursuant to the provision of section C herein.

C. Records of Exempt Occupancies

The Hotel Operator shall maintain records to support and identify all exempt occupancies. Exemption certificates, letters of exemption, direct payment permits, and other documents relating to exemptions from tax issued under the provisions of the sales and use tax portion of the Tax Reform code of 1971 (72 P.S. Section 7101 – 8203) or regulations promulgated there under, are of no force and effect with respect to the Hotel Room Rental Tax with the exception noted in subsection (B) of this section.

VI. OPERATOR EXEMPTION RECORDS

A. Patron Exemption Records

The Operator shall maintain records to support and identify all exempt Patrons. The records shall include a Hotel room Rental Tax Exemption Certificate which will be completed and signed by both the Operator and Permanent Resident. The Operator shall also provide to the Treasurer a quarterly statement itemizing all exemption claimed on a recap form provided by the Treasurer.

In all instances where an Operator claims an exemption to the Ordinance pursuant to the Rules & Regulations, the Operator will retain copies of identification cards of the Patron or other records indicating the exempt Patron's job number, employer, place of employment or other identifying information.

B. Room Exemption Records

The burden of proving that a room is not taxable is the sole responsibility of the Operator who must demonstrate the same through accurate records. In any case where an Operator fails to maintain adequate records as required under the Ordinance any Room for which there is not adequate records shall be considered occupied for the entire period for which the supporting records are lacking.

VII. COLLECTION OF TAX, REPORTS AND RETURNS

- A. Except as otherwise provided by the Ordinance or these Rules and Regulations, the Operator / Booking Agent shall be considered by the Treasurer to perform the duty of collection for the Hotel Room Rental Tax, having the same fiduciary obligation as placed on the local tax collectors under the Pennsylvania Local Tax Collection Law. Any tax collected that is not paid to the Treasurer shall be deemed a debt owed to the County of Elk. Any Patron or Operator / Booking Agent owing any monies to the County pursuant to the provisions of the Ordinance shall be liable to the County for the same. Action to collect under the Ordinance shall be brought by the County of Elk.
- B. The Operator / Booking Agent shall collect the Hotel Room Rental Tax from the Patron as imposed by the Ordinance and remit tax to the County Treasurer on or before the twenty fifth (25) day of the month following the calendar quarter. The Operator / Booking Agent shall submit to the Treasurer a report that will reflect the prior calendar quarter's Hotel Room Rental Tax information. The report shall include the amount of the Hotel Room Rental Tax collected and any other supporting documents required or requested by the Treasurer.

PAYMENT SCHEDULE

| PERIOD COVERED | PAYMENT DUE DATE |
|--------------------------------|-----------------------------|
| January, February and March | April 25 |
| April, May and June | July 25 |
| July, August and September | October 25 |
| October, November and December | January 25 |

C. Late Returns, Interest and Penalties

Any amount of tax is not received by the due date, a late filing fee of \$50.00 will be assessed. Any payment of the Hotel Room Rental Tax made after the due date shall be subject to late payment interest at the rate of 1.5% per month, on the amount of tax that remains unpaid. The penalties shall be added to and paid with the filing of the return.

D. Forms

Only official Treasury reports and returns will be accepted by the Treasurer. Official reports and returns are available online on the Treasurer's web page, disk or paper. An initial supply of paper reports and returns will be supplied to all Operators / Booking Agents. The Operator / Booking Agent may photocopy forms, as additional copies are needed.

VIII. FAILURE TO COLLECT AND REPORT

A. Determination Process

If any Operator / Booking Agent fails to register with the Treasurer or fails or refuses to collect the Hotel Room Rental Tax under these Rules & Regulations, or fails or refuses to produce any report on the official Treasurer forms as required by these Rules & Regulations, the Treasurer or any duly authorized representative of the County shall proceed in such a manner as deemed necessary to obtain the facts and information on which to base an estimation of the Hotel Room Rental Tax due, together with any interest, late charges, costs, and attorney fees.

If the Treasurer or any duly authorized representative of the County is unable to determine the tax due from operator / booking agent records, the tax due for each unpaid tax year, or part thereof, shall be determined to be the lesser of the following:

- (1) Five (5%) percent of the Consideration that could have been received by the Operator / Booking Agent for all Hotel Rooms during the tax year at occupancy rates in effect at the time of the determination.
- (2) Five (5%) percent of the annualized Consideration received during the tax year prior to the determination.

B. Determination Notification

The Treasurer shall give a determination notice to the Operator / Booking Agent at the Operator's/Booking Agent's last known place of business, either in person or by U.S. mail.

C. Operator's / Booking Agent's Response to Determination

The Operator / Booking Agent may within ten (10) days after the service of the Determination respond in writing to the Treasurer to request a hearing on the amount calculated in the Determination.

If the Operator / Booking Agent responds in writing within the time prescribed, the Treasurer shall give not less than five (5) days prior written notice to the Operator / Booking Agent of a hearing, to show cause, why the determination is improper.

If the Operator / Booking Agent does not make such application within the time prescribed the amount due in the Determination shall become final and conclusive and immediately become due and payable to the County of Elk.

D. Determination Hearing Outcomes (Assessment)

At the conclusion of the Determination hearing, the Treasurer shall ascertain the proper amount of Hotel Room Rental Tax due, together with any late charge, interest, costs and attorney fees. A written notice shall be provided to the Operator / Booking Agent for the total Assessment amount due. The Assessment will be payable within thirty (30) days unless an appeal is taken pursuant to these Rules & Regulations.

E. Failure to Remit Assessment

The Operator / Booking Agent shall have ten (10) days to remit the amount of the Assessment. If the Operator / Booking Agent fails to remit to the Treasurer the amount of the Assessment within the ten (10) days, from the date of written notification, the County Solicitor shall bring or cause to be brought a civil action in any Court having jurisdiction to enforce the payment of all tax and late payment fees due.

IX. APPEAL PROCESS

An Operator / Booking Agent aggrieved by any decision of the Treasurer with respect to the amount due for the Hotel Room Rental Tax, interest, late charges, costs and attorney fees may appeal the decision of the County to the Court of Common Pleas of Elk County, pursuant to the applicable rules of the Pennsylvania Rules of Civil Procedure. The Treasurer reserves the right to waive such late charges, costs or attorney fees based upon good cause shown.

X. ENFORCEMENT

- A. Whenever any Operator / Booking Agent shall fail to pay the taxes herein provided, the County may bring a civil action in any court having jurisdiction to enforce the payment of all taxes, fees and interest due. There shall be added to the claim reasonable attorney fees as permitted under Section 7106 of the Municipal Lien Law; 53 P.S. Section 7101 et seq.
- B. In addition to any civil remedies imposed by this Ordinance, an operator / booking agent of a Hotel who fails to remit taxes collected under authority of this ordinance shall be subject to criminal penalties in a summary proceeding in an amount not exceeding \$100 for the first offense and \$500 for each subsequent offense. Each time that the operator fails to make a quarterly remittance shall be considered a separate offense.

XI. RECORDS REQUIREMENTS

- A. Retention
Every Operator / Booking Agent shall be liable to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of the Hotel Room Rental Tax.
- B. Location
The records shall be maintained at the place of business where the subject Rooms were rented.
- C. Access to Records
The County, the County Treasurer or duly authorized representative shall have access to any books documents, papers and records of the Operator / Booking Agent and recognized Tourist Promotion Agency which are directly pertinent to the collection and expenditure of the proceeds of the tax authorized by this Ordinance for the purpose of making audit examination, excerpts and transcriptions.

XII. REFUNDS TO OPERATOR / BOOKING AGENT

A. Overpayment

Whenever, the amount of the Hotel Room Rental Tax, interest late charges costs, or attorney fees has been overpaid, the overpayment may be refunded to the Operator / Booking Agent, provided that a verified written claim is filed by the Operator / Booking Agent with the Treasurer within three (3) years of the date of payment stating the specific grounds why the claim was made. The Operator / Booking Agent must either return the refunded payment to the Patron or credit such amount to the Patron or credit such amount to the Patron's account. If the Patron's address is unknown or unascertainable after a reasonable investigation, such refund shall be resubmitted by the Operator / Booking Agent to the Treasurer and shall be subject to the applicable escheat laws and statutes.

XIII. RIGHT TO PRIVACY

All reports, returns, and forms submitted to the County Treasurer are subject to public disclosure under the Pennsylvania Right to Know Law. The Treasurer shall not disclose any confidential information, which is otherwise protected by law.

XIV. SEVERABILITY OF PROVISIONS

In the event any provision section, sentence, clause or part of these Rule & Regulations shall be held to be invalid, such invalidity will not affect or impair any remaining provision, section, sentence, clause or part of the Rules & Regulations, it being the intent of the Treasurer that the remainder of these Rules & Regulations shall remain in full force and effect.

XV. AMENDMENTS

The Treasurer reserves the right to, from time to time, without advance notice, amend and/or supplement these Rules & Regulations. Amendments and/or supplements to the Rules & Regulations will be made available to the Operator / Booking Agent.

Upon approval from the Elk County Commissioners the attached Rules and Regulations will take effective January 21, 2020.

ELK COUNTY COMMISSIONERS






