

CHAPTER 703
Hotel and Motel Tax
(AS AMENDED BY ORDINANCE 8746-2000, DECEMBER 5, 2000)

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CROSS REFERENCES

Power to levy - see Ohio R.C. 5739.02(C)

703.01 DEFINITIONS.

As used in this chapter:

"Board of Review" means the Board of Review established under Section 1725.01 of Chapter 1725 of the Codified Ordinances of the City of Brook Park.

"Director " or Director of the Department of Taxation means the Director of the Department of Taxation for the City of Brook Park or the person executing the duties of such

"Hotel," "motel" and "motor inn" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

"Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms or space or portion thereof, in any hotel or motel or motor inn for

dwelling, lodging or sleeping purposes. The use or possession or the right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample, or display space shall not be considered occupancy within the meaning of this definition unless the person exercising occupancy uses or possesses or has the right to use or possess, all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

"Operator" means any person who is the proprietor of the hotel, motel or motor inn whether in the capacity of owner, lessee, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character, other than an employee, the managing agent shall be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered compliance by both.

"Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or other group or combination acting as a unit..

"Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or service of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

"Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

"Fundamental Change" means any substantial alteration by an employer including liquidation, dissolution, bankruptcy and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, form or organization

703.02 IMPOSITION OF TAX; EXEMPTION.

For the purpose of providing revenue with which to meet the needs of the City, a Hotel and Motel tax is hereby levied on transactions by which lodging in a hotel, motel or motor inn is or is to be furnished to transient guests. Such Hotel and Motel tax to become effective from and after May 4, 1976.

The tax is three percent of the amount paid or to be paid by the transient guest for the lodging. The tax applies and is collectible at the time the lodging is furnished, regardless of the time when the amount paid for lodging is paid.

Within 30 days after the effective date of this Ordinance or within 30 days of commencing business, whichever is later, each operator of any hotel, motel or motor inn renting lodging to transient guests shall register the hotel, motel or motor inn with the Director of the Department of Taxation on such form as prescribed by the Director. The Director will then issue a tax identification number for the City of Brook Park. It shall be

the operator's responsibility to update such registration in the event of any fundamental change

(A) No tax shall be imposed under this ordinance on:

- (1) rents not within the taxing power of the city under the Constitution or laws of the state or the United States; or
- (2) rents paid by the city or any of its political subdivisions.
- (3) rents paid by the state or any of its political subdivisions

B) No exemption claimed under (A) above shall be granted except on a claim therefor made at the time the rent is collected and under penalty of perjury on a form prescribed by the Director of the Department of Taxation. All claims of exemption shall be made in the manner prescribed by the Director of the Department of Taxation.

For the proper administration of this chapter and to prevent evasion of the tax, it is presumed that all lodging furnished by hotels, motels and motor inns in this City to transient guests is subject to the tax until the contrary is established.

703.03 TRANSIENT GUEST TO PAY TAX; PROOF OF EXEMPTION.

The transient guest shall pay the tax imposed by this chapter to the operator, and each operator shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging.

If the transaction is claimed to be exempt, the transient guest must furnish to the operator, and the operator must obtain from the transient guest, a certificate specifying the reason that the sale is not legally subject to the tax. If no certificate is obtained, it shall be presumed that the tax applies.

703.04 REFUND OF ILLEGAL OR ERRONEOUS PAYMENTS.

The Director of the Department of Taxation of Brook Park shall refund to operators the amount of taxes paid illegally or erroneously or paid on any illegal or erroneous assessment where the operator has not reimbursed himself from the transient guest. When such illegal or erroneous payment or assessment was not paid to an operator but was paid by the transient guest directly to the Director of the Department of Taxation of Brook Park or his agent, he shall refund the tax to the transient guest. Applications shall be filed with the City Director of the Department of Taxation, on the form prescribed by him, within ninety days from the date it is ascertained that the assessment or payment was illegal or erroneous. However, in any event an application for refund must be filed with the Director of the Department of Taxation within four years from the date of the illegal or erroneous payment of the tax. On filing of the application the Director of the Department of Taxation shall determine the amount of refund due and process such refund request in accordance with established procedures.

703.05 RECORDS; INSPECTION; DESTRUCTION.

Each operator shall keep complete and accurate records of lodging furnished, together with a record of the tax collected thereon, which shall be the amount due under this chapter and shall keep all invoices, and such other pertinent documents. If the operator

furnishes lodging not subject to the tax, the operator's records shall show the identity of the transient guest, if the sale was exempted by reason of such identity, or the nature of the transaction if exempted for any other reason. Such records and other documents shall be opened during business hours to the inspection of the Director of the Department of Taxation of Brook Park and shall be preserved for a period of seven years, unless the Director of the Department of Taxation, in writing, consents to their destruction within that period, or by order requires that they be kept longer.

703.06 RETURNS REQUIRED; PROCEDURE; FORFEIT FOR FAILURE TO FILE.

(A) Each operator shall, on or before the twentieth day of each month, remit a Hotel and Motel tax return for the preceeding month by electronic funds transfer pursuant to subsection (B). Nothing in this subsection shall be construed as relieving an employer from complying with subsections (B) and (C).

(B) Except as otherwise provided in this paragraph, the payment of taxes by electronic funds

transfer does not affect an operators obligation to file as required under this section. The Director of Taxation may adopt rules governing the format for filing the returns under this section by operators who remit undeposited taxes by electronic funds transfer. The Director of Taxation may permit the filing of returns at less frequent intervals than required by this section if the director determines that remittance by electronic funds transfer warrants less frequent filing of returns.

(C) The Director of the Department of Taxation shall adopt rules governing the remittance of taxes by electronic funds transfer as required by this chapter. The rules shall govern the modes of electronic funds transfer and under what circumstances each mode is acceptable, the content and format of electronic funds transfers, the coordination of payment by electronic funds transfer and the filing of associated tax reports and returns, and any other matter that in the opinion of the Director of the Department of Taxation facilitates payment by electronic funds transfer. The Director of Taxation may grant an exemption to an operator from the duty to make payment by electronic funds transfer, upon application, for such exemption by the operator and operators demonstration to the Director of Taxation that the requirement to make payment by electronic funds transfer will impose a substantial hardship upon the operator. The Director of Taxation may implement means of acknowledging, upon request of the taxpayer, receipt of tax remittances made by electronic funds transfer, and may adopt rules governing acknowledgements. The cost of acknowledging receipt of electronic remittances shall be paid by the person requesting acknowledgement.

(D) On or before January 31, of each year beginning with the year 2001, each operator shall file a Hotel and Motel tax annual reconciliation on a form prescribed by the Director of the Department of Taxation. Such form shall state the annual amount of rent received, the annual amount of rent exempted for the preceding calendar year, and such other information as the Director may require . Such form or forms shall be furnished by or obtainable upon request from the Director of the Department of Taxation.

The Director of the Department of Taxation may extend the time for making and filing returns. The Director of the Department of Taxation may authorize operators whose tax liability is not such as to merit monthly returns, as determined by the Director of the Department of Taxation upon the basis of administrative costs to the City, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed. The Director of the Department of Taxation, if he deems it necessary in order to insure the payment of the tax imposed by this chapter, may require returns and payments to be made for other than monthly periods. The returns shall be transmitted by the operator or his authorized agent.

703.07 LIABILITY OF GUEST; ASSESSMENT; PETITION FOR REASSESSMENT; PENALTIES.

If any operator collects the tax imposed by or pursuant to this chapter and fails to remit the tax to the City as prescribed, he shall be personally liable for any amount collected which he failed to remit. The Director of the Department of Taxation may make an assessment against the operator based upon any information in the Director of the Department of Taxation's possession.

If any operator fails to collect the tax or any transient guest fails to pay the tax imposed by or pursuant to this chapter on any transaction subject to the tax, such operator or transient guest shall be personally liable for the amount of the tax applicable to the transaction. The Director of the Department of Taxation may make an assessment against either the operator or transient guest, as the facts may require, based upon any information in his possession.

An assessment against an operator in cases where the tax imposed by or pursuant to this chapter has not been collected or paid, shall not discharge the transient guest's liability to reimburse the operator for the tax applicable to such transaction.

In each case the Director of the Department of Taxation shall give to the operator or transient guest an assessed written notice of the assessment. The notice may be served upon the operator or transient guest assessed personally or by ordinary mail. An assessment issued against either, pursuant to the provisions of this chapter shall not be considered an 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 operator or transient guest for the tax due on a particular transaction if the tax has actually been paid by another.

The Director of the Department of Taxation may make an assessment against any operator who fails to file a return required by this chapter or fails to remit the proper amount of tax in accordance with this chapter. When information in the possession of the Director of the Department of Taxation indicates that the amount required to be collected is, or should be, greater than the amount remitted by the operator, the Director of the Department of Taxation may upon the basis of test checks of an operator's business for a representative period which are hereby authorized, determine the ratio which the tax required to be collected under this chapter bears to the hotel's lodgings which determination shall be the basis of an assessment as herein provided in this chapter.

Notice of such assessment shall be made in the manner prescribed in this chapter. Unless the operator or transient guest, to whom the notice of assessment is directed, files within thirty days after service thereof, either personally or by registered or certified mail,

a petition in writing, verified under oath by the operator, transient guest or his authorized agent having knowledge of the facts, setting forth with particularity the items of assessment objected to, together with the reasons for objections, the assessment shall become conclusive and the amount thereof shall be due and payable, from the operator or transient guest so assessed, to the Department of Taxation, City of Brook Park, Ohio.

When a petition for reassessment is filed, the Director of the Department of Taxation shall assign a time and place for the hearing of the petition and shall notify the petitioner thereof by ordinary mail, but the Director of the Department of Taxation may continue the hearings from time to time if necessary.

When any operator or transient guest files a petition for reassessment as provided in this chapter, the assessment made by the Director of the Department of Taxation together with penalties thereon, shall become due and payable within ten days after notice of the finding made at the hearing has been served, either personally or by ordinary mail, upon the party assessed.

A penalty shall be imposed on operators who are required to remit Hotel and Motel taxes and who fail to make such remittance by means of electronic transfer, or who fail to utilize the required specific format, as required under Section 703.06 (B) and (C), in the amount of ten percent (10%) of the sum which the operator was required to remit by electronic funds transfer.

All taxes imposed and all moneys collected or required to be collected under the provisions of this chapter and remaining unpaid after they are due shall be penalized as follows:

- (1) Ten percent per month, or fraction thereof, or fifty dollars (\$50.00), whichever is greater,
for a first offense; or
- (2) For a second and all subsequent offenses, ten percent per month, or fraction thereof,
or
One hundred dollars (\$100.00), whichever is greater.
- (3) If the Director of the Department of Taxation determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of 25% of the amount of the tax shall be added thereto, in addition to the penalties stated in (1) and (2) above.

All taxes imposed and all moneys collected or required to be collected by operators under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (1.5%) per month or fraction thereof together with the costs of any collection actions, taxed and to be taxed.

No additional penalty provided under the terms of this ordinance shall be imposed during the pendency of any hearing provided herein, nor during the pendency of any appeal to the Board of Review provided for herein.

703.08 FOUR YEAR LIMITATION FOR ASSESSMENTS; EXCEPTIONS.

No assessment shall be made or issued against an operator or transient guest for any tax imposed by or pursuant to this chapter more than four years after the return date for the period in which the lodging was furnished or more than four years after the return for such period is filed, whichever is later. This division does not bar an assessment:

(a) When the Director of the Department of Taxation has substantial evidence of amounts of taxes collected by an operator from transient guest's lodging which were not returned to the City;

(b) When an assessed operator failed to file a return as required.

703.09 TAX TO BE PAID BY TRANSIENT GUEST; FALSE EVIDENCE OF TAX?EXEMPT STATUS PROHIBITED.

No transient guest shall refuse to pay the full and exact tax as required by this chapter; no transient guest shall present false evidence to the operator indicating that the lodging as furnished is not subject to the tax.

703.10 OPERATOR TO COLLECT TAX; REBATE PROHIBITED.

No operator shall fail to collect the full and exact tax as required by this chapter. No operator shall refund, remit or rebate to a transient guest, either directly or indirectly, any of the tax levied pursuant to this chapter, or make in any form of advertising, verbal or otherwise any statements which might imply that he is absorbing the tax, or paying the tax for the transient guest by an adjustment of prices, or furnishing lodging at a price including the tax, or rebating the tax in any other manner.

Each operator in collecting Hotel and Motel tax shall be deemed to hold the same, until payment is made by such operator to the Department of Taxation, as a Trustee for the benefit of the City of Brook Park and any such Hotel and Motel tax collected by such operator, shall, until the same is paid to the Director of the Department of Taxation, be deemed a trust fund in the hands of such operator. All returns and payments submitted by the operator shall be treated as confidential by the Director of the Department of Taxation and shall not be released by him except on order of a court of competent jurisdiction or to an officer or agent of the United States, the state, the county or the city for official use only. Whoever violates this confidentiality shall be guilty of a violation of chapter 703.99 of this ordinance.

703.11 RETURN MUST BE FILED; PROCEDURE IN A FAILURE TO FILE.

(a) No person, including any officer of a corporation or employee of a corporation having control or supervision of or charged with the responsibility of filing returns, shall fail to file any return or report required to be filed by this chapter, or file or cause to be filed any incomplete, false or fraudulent return, report or statement, or aid or abet another in the filing of any false or fraudulent return, report or statement.

(b) If any operator required to file monthly returns under this chapter fails, in two consecutive months or in three or more months within a twelve?month period, to file such returns when due or to pay the tax thereon, or if any operator authorized by the Director of the Department of Taxation to file returns at less frequent intervals, fails on two or more occasions within a twenty?four month period, to file such returns when due or to pay the tax due thereon, the Director of the Department of Taxation may require such operator to furnish security in an amount equal to the average tax liability of the operator for a period of one year, as determined by the Director of the Department of Taxation from a review of returns or other information pertaining to such operator, which amount shall in no event be less than one hundred dollars (\$100.00). The security may be

in the form of an advance tax payment to be applied to pay the tax due on subsequent returns, or a corporate surety bond satisfactory to the Director of the Department of Taxation, conditioned upon payment of the tax due with the returns from the operator. The security must be filed within ten days following the operator's receipt of the notice from the Director of the Department of Taxation of its requirements.

A corporate surety bond filed under this section shall be returned to the operator if, for a period of twelve consecutive months following the date the bond was filed, the operator has filed all returns and remitted payment therewith within the time prescribed in this chapter.

703.12 PERSONAL LIABILITY OF CORPORATE OFFICERS OR EMPLOYEES.

If any operator required to file returns and to remit tax due to the City under the provisions of this chapter fails for any reason to make such filing or payment, any of its officers or employees having control or supervision of or charged with the responsibility of filing returns and making payments shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or remit tax due. Returns and payments are due immediately upon cessation of business for any reason. The sum due for such liability may be collected by assessment in the manner provided in this Chapter. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for recovery of the amount due plus assessments together with the costs of this action, taxed and to be taxed.

703.13 INTENT

It is the intent of this chapter to levy the Hotel and Motel tax of three percent on transactions by which lodging by a hotel, motel or motor inn is or is to be furnished to transient guests as referred to and authorized by Ohio R.C. 5739.02(C). Accordingly, this chapter shall be construed to effectuate that purpose and so as to be consistent with any requirement of law compliance with which is a prerequisite to the validity of the tax intended to be levied hereby.

703.14 SEVERABILITY.

If any sentence, clause, section or part of this chapter or any tax imposed as specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

703.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the first degree, punishable under Chapter 501 of the Codified Ordinances.

703.100 RIGHT TO APPEAL

Any operator dissatisfied with any ruling or decision of the Director of the Department of Taxation, which is made under the authority conferred by this title may, in writing, appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Director stating why the decision should be deemed unlawful or inaccurate. The imposition of penalty, interest or assessments as prescribed in subsection 703.07 shall not be the sole basis for an appeal.

The Board of Review shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof. Such hearing shall be scheduled within thirty days from the date of appeal unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board of Review and may be represented by an attorney at law, certified public accountant, or other representative.

The Board of Review's ruling must be made within fifteen days from the date of the hearing, and send notice of the decision by ordinary mail to the petitioner within fifteen days after issuing the decision. Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within sixty days from the announcement of such ruling or decision.

703.101 BOARD TO ESTABLISH RULES AND REGULATIONS

The Board of Review shall elect from its members a chairman, a vice-chairman and a secretary. A majority of the members shall constitute a quorum. Any member other than a public member may appoint a deputy to act for him at meetings of the Board. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions.

Such records are not public records under Section 149.43 of the Ohio Revised Code.

Hearings requested by a taxpayer before the Board of Review pursuant to this Title are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code. All hearings upon appeal by the Board shall be conducted privately and the provisions of Section 703.99 with reference to the confidential character of information required to be disclosed by the ordinance shall apply to such matters as may be heard before the Board of Review on appeal.

703.102 AUTHORITY TO HEAR APPEALS

The Board of Review as established in Section 1725.01 of Chapter 1725 of the codified ordinance of the City of Brook Park is hereby authorized to hear appeals in any tax matter arising by reason of the levying of any Hotel or Motel tax or taxes by the City .

703.103 RETURNED CHECKS

Checks or electronic transactions returned to the City for nonsufficient funds, or other reasons, will be charged a twenty five dollar (\$25.0) handling fee. A second check or electronic transaction returned to the City for nonsufficient funds, or other reasons, will be charged a fifty dollar (\$50.00) handling fee and the City will require all non-electronic payments to be made by currency, bank check or money order only.