

## Chapter 4.16

### TRANSIENT OCCUPANCY TAX

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#### 4.16.010 Title.

This chapter shall be known as the transient occupancy tax of the county. (Ord. G-5838 § 2 (part), 1992)

#### 4.16.020 Definitions.

Except where the context otherwise requires, the following definitions shall govern the construction of this chapter.

A. "Hotel" means any structure or any portion of any structure, which is occupied or intended or designed for occupancy by transients for lodging or sleeping purposes and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging

house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof. "Hotel" does not include a hospital room, medical clinic, convalescent home or home for the aged, or campsite in a unit of the state park system. Also, "hotel" does not include a private home, vacation cabin, timeshare estate in a room or rooms in a timeshare project as defined by Section 11003.5 of the Business and Professions Code, or similar facility which is rented by a person who is not regularly engaged in the business of renting such facilities and does so only occasionally and incidentally to his own use thereof.

B. "Occupancy" means the use or possession, or the right to use or possession, of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes. For purposes of this subdivision, "occupancy" shall not mean the use or possession, or the right to use or possession, of a guest of the owner of a timeshare estate in a room or rooms in a timeshare project who accompanies the owner or who exercises that owner's right of occupancy in a timeshare estate either without payment of any compensation to the owner or pursuant to any form of an exchange program.

C. "Operator" means the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. If the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also 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 to be compliance by both.

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

E. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be

received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom.

F. "Tax collector" means the tax collector of the county of Kern.

G. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of less than thirty (30) consecutive calendar days, counting portions of calendar days as full days. Any such person occupying a space in a hotel shall be conclusively presumed to be a transient for purposes of this chapter for the first thirty (30) days of residency unless there is a written agreement between the operator and the person evidencing a contract for a longer term of occupancy and the owner has lodged a certificate of lease (in a form acceptable to the tax collector) evidencing this agreement with the tax collector as an attachment to the quarterly (or more frequent) transient occupancy tax reports required by Section 4.16.070. (Ord. G-6323 § 2, 1996; Ord. G-5838 § 2 (part), 1992)

#### **4.16.030 Amount-Payment.**

For the privilege of occupancy in any hotel located in the unincorporated area of Kern County on and after the effective date of the ordinance codified in this chapter, each transient is subject to and shall pay a tax in the amount of six percent (6%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the county which is extinguished only by payment to the operator or to the county. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due when the transient ceases to occupy space in the hotel. If the tax due is not paid to the operator, such tax shall be paid directly to the tax collector. (Ord. G-5838 § 2 (part), 1992)

#### **4.16.040 Exemptions.**

A. No tax shall be imposed upon the following persons and occupancies:

1. Any person as to whom, or any occupancy as to which, it is beyond the power of the county to impose the tax herein provided;

2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;

3. Any occupancy, by one (1) or more occupants, for which the total rent paid by the occupants is less than two dollars (\$2.00) a day.

B. No exemption shall be granted under subsection (A) of this section unless a claim of exemption in the form prescribed by the tax collector is executed by the transient under penalty of perjury and filed with the operator at the time rent is collected. (Ord. G-5838 § 2 (part), 1992)

#### **4.16.050 Duties of operator.**

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged and each transient shall receive a receipt for payment of the tax from the operator. No operator of a hotel 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. G-5838 § 2 (part), 1992)

#### **4.16.060 Registration of operators.**

Every person engaging in or about to engage in business as an operator of a hotel in the unincorporated area of Kern County, shall register with the tax collector on a form provided by the tax collector. Such registration form shall set forth the name under which such person transacts or intends to transact business, the location of the place or places or business and such other information to facilitate the collection of tax as the tax collector may require. If the business is operated by a business entity, the names and addresses of the officers or the entity and the names and addresses of all partners or shareholders holding more than a twenty percent (20%) equity interest in the entity shall be listed on

the form. The registration form shall be signed by the owner, if the owner is a natural person, by a member or partner, in the case of an association or partnership, and by an executive officer or some person specifically authorized to act on behalf of a corporation. Any changes in the information contained in a previously submitted registration form shall be reported to the tax collector within thirty (30) days. Upon submission by the owner of a complete registration form and its acceptance as complete by the tax collector, the tax collector shall issue, without charge, a certificate of authority to each registrant to collect the tax from transients, together with a duplicate thereof for each additional place of business of such registrant. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the tax collector upon the cessation of business at the location named or upon sale or transfer of the hotel. Each certificate shall be prominently displayed in the hotel so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. Failure to post the certificate in a prominent place shall be a violation of Section 4.16.200 of this chapter. The certificate shall contain the following information:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued; and
- D. Such other relevant information as may be required by the tax collector to assist in correct reporting and collection of the transient occupancy tax.

The certificate shall also contain the following statement:

This Transient Occupancy Registration Certificate signifies that the person named has fulfilled the requirements of the Transient Occupancy Tax Ordinance of the County of Kern by registering with the tax collector for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the tax collector. This certificate does not constitute a hotel business permit, a land use permit or a license to operate a hotel on this premises or to operate a hotel business without full compliance with all other statutes, ordinances and zoning regulations.

#### **4.16.070 Reporting and Remitting.**

Each operator shall on or before the last day of the calendar month following the close of each calendar quarter, or at the close of any shorter reporting period quarter, or at the close of any shorter reporting period which may be established by the tax collector, make a return to the tax collector, on forms provided by him, of the total rents charged and received and the amount of tax collected from transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax collector. The tax collector may establish shorter reporting periods for any operator if he deems it necessary in order to ensure collection of the tax, and he may require additional information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the county until payment thereof is made to the tax collector. (Ord. G-5838 § 2 (part), 1992)

#### **4.16.080 Remittance by mail.**

If a remittance to cover a payment required by this chapter to be made to the tax collector on or before a specified date is sent through the United States mail, properly addressed with postage prepaid, it shall be deemed to have been received by the tax collector on the date shown by the post office cancellation mark stamped upon the envelope containing the remittance, or on the date it was mailed if proof satisfactory to the tax collector establishes that the mailing occurred at an earlier date. Nothing in this section shall be construed as constituting payment of any remittance required, unless such remittance is actually received by the tax collector. (Ord. G-5838 § 2 (part), 1992)

#### **4.16.090 Penalty-Original delinquency.**

Any operator who fails to remit any tax imposed by this chapter within the time required by Section 4.16.070 of this chapter shall pay a penalty of ten percent (10%) of the total amount of the tax in addition to the amount of the tax. (Ord. G-5838 § s (part), 1992)

#### **4.16.100 Penalty-Continued Delinquency.**

Any operator who fails to remit any delinquent remittance on or before the last day of the second calendar month following the close of each calendar quarter 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 ten percent (10%) penalty first imposed. (Ord. G-5838 § 2 (part), 1992)

#### **4.16.110 Penalty-Fraud.**

If the tax collector determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of seventy-five percent (75%) of the amount of the tax shall be added thereto in addition to the penalties stated in Sections 4.16.090 and 4.16.100 of this chapter. (Ord. G-6323 § 4, 1996: Ord. G-5838 § 2 (part), 1992)

#### **4.16.120 Penalty-Interest.**

In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent (1.5%) per month or any fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid. (Ord. G-6323 § 5, 1996: Ord. G-5838 § 2 (part), 1992)

#### **4.16.130 Penalties, Interest and Tax Collector's Costs of Collection merge with Tax.**

Every penalty imposed, any such interest as accrues under the provisions of Sections 4.16.090 through 4.16.120 of this chapter and all tax collector's actual costs of collection of tax incurred from the time of delinquency until the time the transient occupancy tax, penalties and interest are actually paid shall become part of the tax herein required to be paid. (Ord. G-6323 § 6, 1996: Ord G-5838 § 2 (part), 1992)

#### **4.16.140 Failure to collect and report tax.**

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this

chapter, the tax collector shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax collector secures such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. When such determination has been made, the tax collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known address. Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the tax collector for a hearing on the amount assessed. If application by the operator for a hearing is not made within said ten (10) day period, the tax, interest and penalties determined by the tax collector shall become final and conclusive and immediately due and payable. If such application is made, the tax collector shall give not less than five (5) days' written notice to the operator, in the manner prescribed above, to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the tax collector shall determine the proper tax to be remitted and shall thereafter give written notice to the operator in the manner prescribed above of such determination and amount of such tax, interest and penalties. The amount determined to be due shall be payable fifteen (15) days after the serving or mailing of such notice unless an appeal is taken as provided in Section 4.16.70 of this chapter. (Ord. G-5838 § 2 (part), 1992)

#### **4.16.150 Deficiency determinations.**

If the tax collector is not satisfied with a return filed by an operator of the amount of the tax required to be paid to the county pursuant to a return, he may compute and determine the amount required to be paid upon the basis of facts contained in the return or upon the basis of any information within his possession or that

may come into his possession. One (1) or more deficiency determinations may be made of the amount due for any period. The tax collector shall give to the operator written notice of his determination in the same manner as provided in Section 4.16.140 of this chapter. The operator shall be entitled to apply for a hearing on the amount assessed to him pursuant to the procedure set forth in Section 4.16.140 of this chapter and shall thereafter be entitled to appeal to the board of supervisors in accordance with the provisions of Section 4.16.170 of this chapter. The penalties and interest provided by Sections 4.16.090 through 4.16.120 of this chapter shall be applicable to the amount of deficiency established pursuant to this section (Ord. G-5838 § s (part), 1992)

#### **4.16.160 Refunds.**

A. Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the tax collector under this chapter, it may be refunded provided a verified claim in writing therefor, stating the grounds upon which the claim is founded, is filed with the tax collector by the person(s) who paid the tax, the person(s) who paid the penalty, or the person(s) who paid the interest, or the administrators or executors of any such person(s), within three (3) years from the date of payment.

B. Claims shall be made on the forms provided by the tax collector. If the claim is approved by the tax collector, the excess of any amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid. The balance may be refunded to such person, his administrators or executors.

C. Only the person who paid the tax, penalty or interest and the tax refund claim rejected may bring an action against the county of Kern to recover such taxes. No other person may bring such an action; but if another should do so, judgment shall not be rendered for the plaintiff.

D. If any operator claims a refund of taxes which were originally collected by the operator from others and that claim is granted, the refund shall be held by the tax collector in a

trust account until the original taxpayers and the amount of the individual claims can be determined to the satisfaction of the tax collector. When such identities and amounts are proven to the satisfaction of the tax collector, the tax collector shall refund the amounts directly to such persons who paid the tax. (Ord. G-6323 § 7, 1996; Ord. G-5838 § 2 (part), 1992)

#### **4.16.170 Appeals.**

Any operator aggrieved by any decision of the tax collector may appeal to the board of supervisors by filing a notice of appeal with the clerk of the board of supervisors within fifteen (15) days after the serving or mailing of the notice of the decision. The board of supervisors shall fix a time and place for hearing such appeal and the clerk of the board of supervisors shall give notice in writing to such operator at his last known address. The decision of the board of supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of such notice. (Ord. G-5838 § 2 (part), 1992)

#### **4.16.180 Records.**

Every operator liable for the collection and payment to the county of any tax imposed by this chapter shall keep and preserve, for a period of three (3) years, all records necessary to determine the amount of such tax as he may have been liable for the collection and payment to the county. The tax collector shall have the right to inspect said records at all reasonable times. (Ord. G-5838 § 2 (part), 1992)

#### **4.16.190 Actions to Collect Delinquent and Defaulted Taxes, Penalties and Interest.**

A. Suit for Taxes. 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 or required to be 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 under the provisions of this chapter who does not pay such tax by the

date due shall be liable to an action brought in the name of the county in the superior or municipal court for the recovery of such amount. This remedy is cumulative and not exclusive of any other remedy set out in this section.

B. Summary Judgment Against Operator. If any transient occupancy tax, interest or penalty imposed under this chapter is not paid by the delinquency date, this amount may be collected from the operator under the provisions of and through the procedure established by Revenue and Taxation Code Section 3101 et seq. Certificates of delinquency shall be filed and entered by the county clerk as a judgment under the provisions of Revenue and Taxation Code Sections 3102-3107. The tax collector may file a certificate of transient occupancy tax delinquency without fee with the county clerk, specifying the following facts:

1. That the tax collector has caused a notice of intent to file a certificate of default to be sent by registered mail to the operator who failed to remit the taxes collected by the operator from transients. This notice shall be sent to the operator at the operator's last known address. The notice shall be sent not less than ten (10) days prior to the date the certificate is prepared and submitted;

2. That the tax collector's notice of intent to file a certificate of default contained the following information:

a. The name of the operator,

b. The address and commercial name of the property at which the unpaid transient occupancy taxes were collected by the operator.

c. The total amount of transient occupancy taxes, interest, costs and penalties which are unpaid,

d. That the tax collector will seek a judgment for the amount of transient occupancy taxes, penalties and interest unpaid at the time of the filing of the certificate,

e. Upon issuance and recordation of a judgment, additional penalties will continue to

accrue at the rate authorized by Kern County Code Section 4.16.100,

f. A recording fee in the amount set forth in Government Code Section 27361.3 will be required to be paid for purposes of recording a release of the lien;

3. Certification by the tax collector that he/she has correctly calculated and levied the transient occupancy taxes due, the amount of penalties assessed, and any interest due on the taxes;

4. The total amount of the lien to be entered;

5. That the tax collector requests entry of a lien against the real property of the owner for default of payment of transient occupancy taxes as due, which may be enforced and have the priority of a tax lien recorded under Revenue and Taxation Code Sections 2191.3 – 2191.5.

C. Seizure and Sale. Transient occupancy taxes which have not been paid by the operator on or before the date of delinquency established by Sections 4.16.070, 4.16.140, 4.16.150 or 4.16.170 may be collected by the tax collector through the seizure and sale of any of the following property belonging to or assessed to the operator in accordance with the seizure and sale procedures set forth in Revenue and Taxation Code Section 2951 et seq.:

1. Personal property of the operator, including bank accounts, checks and deposits;

2. Improvements to real property;

3. Possessory interests.

The remedies set out in this subsection are cumulative and not exclusive of any other remedy in this section.

D. If any transient occupancy tax, any penalty or interest thereon is unpaid as of the date of delinquency, the tax collector may file, without fee, a certificate of transient occupancy tax delinquency for recordation in accordance with the procedure set forth in Revenue and Taxation Code Sections 2191.3-2191.4. This certificate shall specify the name of the operator

who has defaulted in the payment of transient occupancy taxes collected; the last known business address of the operator, the amount of taxes, penalties, and interest in default; and certification by the tax collector that the amount of the taxes, penalties, and interest have been correctly calculated. Upon recordation of this certificate of delinquency without a fee with the county recorder, the county shall have a lien against the operator which shall be enforceable as a lien against the operator's real property in the county under the provisions of Revenue and Taxation Code Section 2191.4-2193. The remedies under this subsection are cumulative and not exclusive of any other remedy in this section. (Ord. G6075 § 2, 1994; Ord. G-5838 § 2 (part), 1992)

**4.16.195 Action to seize property of operator to assure the payment of taxes pending Section 4.16.170, appeal, judicial action, bond and costs.**

A. Notwithstanding an operator's filing of a timely appeal under Section 4.16.170 from an assessment of transient occupancy taxes, penalties and interest due and defaulted upon, the operator's property may be subject to seizure and sale to assure the payment of the taxes determined due by the tax collector. If the tax collector finds that the seizure of the operator's property pending the decision on appeal brought under Section 4.16.170 is necessary to assure the payment of taxes because there is a great probability that the taxes will not be subject to collection thereafter due to the financial condition of the operator or because of another suitable reason, the tax collector shall file a written declaration under penalty of perjury with the clerk of the board of supervisors setting forth the grounds and necessity for the seizure. Upon the filing of such declaration, the tax collector may seize the operator's personal property, improvements and possessory interests as may be necessary to satisfy the transient occupancy taxes, penalties and interest determined due. The tax collector shall deliver a copy of the declaration to the operator at the time of seizure.

B. An operator may challenge a seizure made pursuant to this section by filing a verified petition in the superior court for a writ of prohibition or writ of mandate alleging:

1. There are no grounds for the seizure;

2. The declaration of the tax collector concerning the necessity for the seizure is untrue or inaccurate; and

3. There are and will be sufficient funds in the possession of the operator to pay the taxes determined due upon the date that the decision in an appeal brought under Section 4.16.170 is issued by the board of supervisors.

C. As a condition of maintaining an action under this section, the operator shall file a bond or cash deposit with the tax collector in a face amount sufficient to pay the taxes determined due by the tax collector and all fees and charges actually incurred by the tax collector as a result of the seizure. The operator shall lodge proof of the filing of such bond or cash deposit with the superior court. Upon receipt of the bond or cash deposit and the lodging of proof of the same with the superior court, the tax collector shall release the seized property to the operator.

D. If the operator prevails in the application for a writ brought under this section, the operator shall be entitled to recover all reasonable attorneys fees and costs incurred by virtue of the seizure and subsequent legal action for the writ, and the tax collector shall bear the costs of seizure and keeping the seized property. If, however, the taxes, penalties and interest are not paid in full when the appeal brought under Section 4.16.170 is determined, the tax collector shall recover from the operator and from the bond or cash deposit of all taxes, penalties, interest determined due, as well reasonable attorneys fees, costs and expenses incurred by the county in making the initial seizure, the operator's petition for relief from the superior court and the costs of collecting all amounts due the county. (Ord. G6075 § 3, 1994)

**4.16.200 Violation-Penalty.**

A. It is unlawful for any operator or other person required to do so to fail or refuse to register as required in this chapter, or to operate a hotel business without compliance with this chapter, or to fail to post the transient occupancy registration certificate in a prominent place as required by Section 4.16.060, or to fail or refuse to furnish any

return required to be made, or to fail or refuse to furnish a supplemental return or other data required by the tax collector, or to render a false or fraudulent return or claim. It is also unlawful for any person required to make, render or sign or verify any report or return to make any false or fraudulent report or return with the intent to defeat or evade the determination of any amount due required by this chapter to be made.

B. Misdemeanor/Infraction. Any person willfully violating any provisions of this chapter shall be guilty of a misdemeanor and shall be subject to punishment by a fine of not more than one thousand dollars (\$1,000.00) by imprisonment in the county jail for a period of not more than six (6) months, or by both such fine or imprisonment. At the option of the District Attorney, any violation of this chapter may be prosecuted as an infraction, subject to a fine of not more than five hundred dollars (\$500.00). (Ord. G-6323 § 8, 1996; Ord. G-5838 § 2 (part), 1992)