

## **<sup>1</sup>CHAPTER 44: HOTEL/MOTEL OCCUPANCY TAX**

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### **44-101**      **Purpose**

It is declared to be the purpose and intent of the General Assembly that each municipality in this State shall be authorized to levy certain excise taxes; that funds be made available to the governing authorities of municipalities for any public purpose; and that funds be made available for the purposes of promoting, attracting, stimulating, and developing conventions and tourism in the various municipalities.

### **44-102**      **Definitions**

The following words, terms and phrases are for the purpose of this chapter and except where the context clearly indicates a different meaning, defined as follows:

1. City. The City of Lawrenceville, Georgia and, variously, the incorporated territory of Lawrenceville, Georgia, wherein the city government is empowered to impose this tax by O.C.G.A. 48-13-50, et seq.
2. City Clerk. The duly appointed City Clerk of the City of Lawrenceville, Gwinnett County, Georgia, or his/her designee.
3. Due Date. The twentieth (20<sup>th</sup>) day after the close of the monthly period for which the tax is to be computed.

4. Estimated tax liability. The operator's prospective tax liability based upon the average monthly tax remittance in the prior fiscal year, as adjusted for change in tax rate or substantial change in circumstances due to damage to the hotel.
5. Folio. Primary documentation produced by a hotel that demonstrates interaction between the operator and the occupant, the date(s) of occupancy, the amount of rent charged for each date together with the amounts of applicable excise tax(es), and the method(s) of payment.
6. Guest Room. Accommodations occupied, or intended, arranged, or designed for transient occupancy, by one (1) or more occupants for the purpose of living quarters or residential use.
7. Hotel. Any facility or any portion of a facility, including any lodging house, rooming house, dormitory, turkish bath, bachelor hotel, studio hotel, motel, motor hotel, auto or trailer court, truckstop, tourist cabin, campground, lodge, time-share or other condominium, inn, public club or private club, containing guest rooms and which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor or otherwise. It does not include any jail, hospital, asylum, sanitarium, orphanage, or prison, detention or other buildings in which human beings are housed or detained under legal restraint.
8. Monthly period. The calendar months of any year.
9. Occupancy. The use or possession, or the right to the use or possession, of any guest room in a hotel or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the guest room.
10. Occupant. Any person who, for a consideration, uses, possesses or has the right to use or possess any guest room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise. However, the term occupant shall not include Georgia state or local government officials or employees when traveling on official business, and who occupy rooms in any hotel as defined in this chapter for a period of five or more consecutive days.
11. Operator. Any person operating a hotel in the corporate limits of the City of Lawrenceville, Gwinnett County, Georgia, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, licensee or any other person otherwise operating that hotel, and who is subject to the taxation imposed for furnishing value to the public any rooms, lodgings, or accommodations.
12. Permanent Resident. Any occupant as of a given date who has or shall have occupied, or has or shall have the right of occupancy, of any guest room in a hotel for not less than 30 continuous days next preceding such date.
13. Person. An individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, cooperative, estate, trust, business trust,

receiver, trustee, syndicate or other group or combination acting as a unit, the plural as well as the singular number; excepting the United States of America, the State of Georgia and any political subdivision of either thereof upon which the City of Lawrenceville is without power to impose the tax herein provided.

14. Rent. The consideration received or occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.
15. Return. Any return filed or required to be filed as herein provided.
16. Tax. The tax on occupants imposed by this ordinance, as provided by O.C.G.A. 48-13-50 et seq.

#### **44-103      Imposition and Rate of Tax**

There is hereby levied and assessed, and there shall be paid a tax of eight (8%) percent of the rent for every occupancy of a guest room in a hotel in the city unless an exemption is provided in 44-106.

The tax shall be paid upon any occupancy on and after July 1, 1988, although this occupancy is had pursuant to a contract, lease or other arrangement made prior to that date. Where rent is paid, or charged or billed, or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax to the extent that it covers any portion of the period from July 1, 1988, and this payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days covered thereby. Where any tax has been paid therefore, the City Clerk may, by regulation, provide for credit or refund of the amount of that tax upon application therefore as provided in 44-108 of this chapter.

#### **44-104      Persons Liable for Tax; Extinguishment of Liability**

Every person occupying a guest room in a hotel in this City is liable for the tax. His liability is not extinguished until the tax has been paid to the City except that a receipt from an operator maintaining a place of business in this City or from an operator who is authorized by the City Clerk, under such rules and regulations as he may prescribe, to collect the tax and who is, for the purposes of this chapter, regarded as an operator maintaining a place of business in this City, which receipt is given to the occupant pursuant to 44-105 hereof, is sufficient to relieve the occupant from further liability for the tax to which the receipt refers.

#### **44-105      Collection of Tax by Operator; Receipt of Occupant; Rules for Collection Schedules**

Every operator maintaining a place of business in the City as provided in the preceding section, and renting guest rooms in the City, not exempted under 44-107 of this chapter shall, at

the time of collecting the rent from the occupant, and shall give the occupant a receipt therefore. In all cases of transactions upon credit or deferred payment, the payment of tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefore at the time and to the extent that these credits are incurred in accordance with the rate of tax owing on the amount thereof. The operator shall be liable for any amount of tax that he fails to collect appropriately. The City Clerk shall have the power to adopt rules and regulations prescribing methods and schedules for the collection and payment of tax.

**44-106      Unlawful Advertising Regarding Tax**

It is unlawful for any operator to advertise or hold out or state to the public or to any guest, 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 rental of the guest room, or that, if added, it or any part thereof will be refunded.

**44-107      Exemptions**

No tax shall be imposed hereunder:

- (1) Upon a permanent resident;
- (2) Upon an occupant who certifies in writing that he is staying in such accommodations as a result of his residence having been destroyed by fire or other casualty;
- (3) Upon the United States and the State of Georgia or any instrumentality of either thereof;
- (4) Upon any official or employee of the State, its units of local government or any other instrumentality of the State, when traveling on official business and presenting written substantiation thereof or paying by State or local government credit or debit card; or
- (5) Upon a foreign diplomat enjoying exemption by treaty or consular convention, when presenting substantiation issued by the United States Department of State.

**44-108      Registration of Operator; Form and Contents; Execution; Certificate of Authority**

(a) Every person engaging or about to engage in business as an operator of a hotel in the City shall immediately register with the City Clerk on a form provided by the City Clerk. Persons engaged in this business must so register no later than 30 days after the date the tax becomes effective and is imposed as set forth in 44-103, but the privilege of registration imposed after the imposition of the tax shall not relieve any person from the obligation of payment or collection of tax on and after the date of imposition thereof, regardless of registration. This registration shall set forth the name under which the person transacts business or intends to

transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the City Clerk may require. The registration shall be signed by the owner if a natural person; in case of an association or partnership, by a member or partner, in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the registration. The City Clerk shall, after this registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant. A separate registration shall be required for each place of business of an operator. Each certificate shall state the name and location of the business to which it is applicable and shall be prominently displayed therein so as to be seen and come readily to the notice of all occupants and persons seeking occupancy. This certificate shall be non-assignable and nontransferable and shall be returned immediately to the City Clerk upon the cessation of business at the location named or upon the sale or transfer of business at that location.

(b) If the City Clerk deems it necessary in order to facilitate initial registration hereunder of persons engaged in business or prior to the date of imposition of tax as set forth in this chapter, he may prescribe provisions therefore other than those provided in this section. Those provisions shall be made to effect the purposes of this chapter. For these purposes, those provisions shall be in lieu of those provided herein. The registration and the certificate thereof shall have the same effect as that provided herein.

#### **44-109      Determinations, Returns and Payments**

(a) Due date of taxes. The tax shall become due and payable from the occupant at the time of occupancy of any hotel in this City. All amount of these taxes collected by any operator are due and payable to the City Clerk on or before the 20<sup>th</sup> day of the month next succeeding the respective monthly period.

(b) Return; time of filing; persons required to file; execution. On or before the 20<sup>th</sup> day of the month next succeeding the respective monthly period, a return for the preceding monthly period shall be filed with the City Clerk, in such form as he may prescribe, by every operator and by every person liable to payment of tax hereunder during that monthly period who has not paid the tax, and made return in regard to the related occupation which is the subject of the tax.

(c) Contents of return. All returns shall show the gross rent, rent from permanent residents, taxable rent, exempt rent, amount of tax collected or otherwise due for the related period and such other information as required by the City Clerk.

(d) Delivery of return and remittance. The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due, to the City Clerk.

(e) Collection fee allowed operators. Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deductions from state tax shall be the same rate authorized for

deduction from state tax under the "Georgia Retailers' and Consumers' Sales and Use Tax Act," approved February 20, 1951 (Ga. L. 1951, p. 360), as now or hereafter amended.

(f) Extension of time for filing a return and paying tax. For a good cause the City Clerk may extend, but not to exceed one (1) month, the time for making any return or payment of tax. No further extension of time may be granted. No extension shall be valid unless granted in writing. Any person to whom an extension of time has been granted, who makes a return and pays the tax within the period of extension shall pay in addition to the tax, interest on the amount thereof at the rate of one percent (1.00%) per month, or fraction thereof, for a period of this extension to the time of return and payment.

(g) Delinquent Returns. If the failure to make any return or to pay the amount of tax by the due date results from providential cause shown to the satisfaction of the governing authority of the city by affidavit attached to the return, and remittance is made within 10 days of the due date, such return may be accepted exclusive of penalty and interest.

#### **44-110      Deficiency Determinations**

(a) Re-computation of tax; authority make; basis of re-computation. If the City Clerk is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the City by any person or operator, he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One (1) or more than one (1) deficiency determination may be made of the amount due for one (1) or more than one (1) period.

(b) Interest on deficiency. The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent (1.00%) per month, or fraction thereof, from the 20<sup>th</sup> day after the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

(c) Offsetting of overpayments. In making a determination, the City Clerk may offset overpayments for a period or periods against underpayments for another period or periods, against penalties and against the interest on underpayments. The interest on underpayments shall be computed in the manner set forth in 44-111(c).

(d) Penalty; negligence or disregard of rules and regulations. If any part of the deficiency for which a deficiency determination has been made is due to negligence or disregard of the rules of this chapter or other authorized rules and regulations, a penalty of twenty-five percent (25%) of the amount of this deficiency shall be added thereto.

(e) Penalty for fraud or intent to evade. If any part of the deficiency for which a deficiency determination is made due to fraud or an intent to evade any provisions of this chapter or other authorized rules and regulations, a penalty of fifty percent (50%) of the deficiency shall be added thereto.

(f) Notice of City Clerk's determination; service. The City Clerk, or his designated representative, shall give to the operator written notice of his determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at his address as it appears in the records of the City Clerk. In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States post office.

(g) Time within which notice of deficiency determination to be mailed. Except in the case of fraud, intent to evade this chapter or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three (3) years after the 20<sup>th</sup> day of the calendar month following the monthly period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period shall last expire.

(h) Appeal or protest of deficiency determination. The procedure for contesting a deficiency determination shall be as provided by O.C.G.A. 48-5-380.

#### **44-111      Determination If No Return Made**

(a) Estimate of gross receipts. If any person fails to make a return, the City Clerk shall make an estimate of the amount of the gross receipts of the person, or as the case may be, of the amount of the total rentals in this City which are subject to the tax. The estimate shall be made for the period or periods in respect to which the person failed to make the return and shall be based upon any information which is in the City Clerk's possession or may come into his possession. Upon the basis of this estimate, the City Clerk shall compute and determine the amount required to be paid the City adding to the sum thus arrived at a penalty equal to fifteen percent (15%) thereof. One (1) or more determinations may be made for one (1) or more than one (1) period.

(b) Manner of computation; offsets; interest. In making a determination, the City Clerk may offset overpayments for a period or penalties, and against the interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in 44-111(c).

(c) Interest on amount found due. The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent (1.00%) per month, or fraction thereof, from the last day of the month following the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

(d) Penalty for fraud or intent to evade. If the failure of any person to file a return is due to fraud or an intent to evade this chapter or rules and regulations, a penalty of fifty percent (50%) of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the fifteen percent (15%) provided in 44-112.

(e) Giving of notice; manner of service. Promptly after making this determination, the City Clerk shall give to the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

#### **44-112 Penalties and Interest for Failure to Pay Tax**

Any person who fails to pay any tax to the City or any amount of tax required to be collected and paid to the City within the time required shall pay a penalty of fifteen percent (15%) of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest on the unpaid tax or any portion thereof as set forth in 44-111(c).

#### **44-113 Collection of Tax**

(a) Security, City Clerk may exact; amount; sale of; notice of sale; return of surplus. The City Clerk, whenever he deems it necessary to insure compliance with this chapter, may require any person subject thereto to deposit with him such security as the City Clerk may determine. The amount of the security shall be fixed by the City Clerk, but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such a manner as the City Clerk deems proper, or \$10,000, whichever amount is the lesser. The amount of the security may be increased by the City Clerk subject to the limitations herein provided. The City Clerk may sell the security at public auction, with the approval of the Mayor and Council, if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be addressed to the person at his address as it appears in the records of the City Clerk. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.

(b) Notice of delinquency to persons holding credits or property of delinquent; time for; duty of persons so notified. If any person is delinquent in the payment of the amount required to be paid by him, or in the event a determination has been made against him which remains unpaid, the City Clerk may, not later than three (3) years after the payment became delinquent, give notice thereof by registered mail to all persons in the City having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property or debts in their possession or under their control at the time they receive the notice until the City Clerk consents to a transfer or disposition or until 20 days elapse after the receipt of the notice. All persons so notified shall within five (5) days after receipt of the notice advise the City Clerk of all these credits, other personal property, or debts in their possession, under their control or owing by them.

(c) Action for tax; time for. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, the City Clerk may bring an action in the courts of this state, or any other state or of the United States in

the name of the City to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

(d) Duty on successors or assignees of operator to withhold tax from purchase money. If any operator liable for any amount under this chapter sells out his business or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover this amount until the former owner procures a receipt from the City Clerk showing that he has been paid or a certificate stating that no amount is due.

(e) Liability for failure to withhold; certificate of notice of amount due; time to enforce successor's liability. If the purchaser of a business fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 30 days after receiving a written request from the purchaser for a certificate, the City Clerk shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the City Clerk of the amount that must be paid as a condition of issuing the certificate. Failure of the City Clerk to mail the notice shall release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out his business or at the time that the determination against the operator becomes final, whichever event occurs later.

(f) Refund of tax, penalty or interest paid more than once or erroneously or illegally collected. 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 city under this chapter, it may be refunded provided a verified claim in writing therefore, stating the specific ground upon which the claim is founded, is filed with the City Clerk within three (3) years from the date of payment. The claim shall be audited and shall be made on forms provided by the City Clerk. If the claim is approved by the City Clerk and the Mayor and Council, the excess 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 and the balance may be refunded to this person, his administrators or executors.

#### **44-114        Administration of Chapter**

(a) Authority of City Clerk. The City Clerk shall administer and enforce the provisions of his chapter for the collection of the tax.

(b) Rules and Regulations. The City Clerk shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this chapter or other laws of the city, county and the state, or the Constitution of this state or the United States, for the administration and enforcement of the provisions of this chapter and the collection of the taxes hereunder.

(c) Records required from operators; form. Every operator renting guest rooms in the City shall preserve, for a minimum of three (3) years, all folios, receipts, certificates or

exemption and such other documents as the City Clerk may prescribe, and in such form as he may require. Said records shall at all times be available for examination within the city.

(d) Examination of records; audits. The City Clerk or any person authorized in writing by him may examine the books, papers, records, financial reports, equipment and other facilities of any person renting guest rooms and any person liable for the tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or if no return is made by the person, to ascertain and determine the amount required to be paid.

(e) Authority to require reports; contents. In administration of the tax, the City Clerk may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to rentals of guest rooms which are subject to the tax. The reports shall be filed with the City Clerk when he requires and shall set forth the rental charged for each occupancy, the date or dates of occupancy and such other information as the City Clerk may require.

(f) Disclosure of business of operators; limitation on rule. The City Clerk or any person having an administrative duty under this chapter shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any operator or any other person visited or examined in the discharge of official duty, or any particular thereof, set forth or disclosed in any return, or permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having that administrative duty under this chapter. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, interest and penalties.

#### **44-115      Applicability**

This chapter shall not apply to any person as to whom, or to any occupancy as to which, it is beyond the power of the Mayor and Council to impose the tax. It specifically shall not apply to any person not licensed by or required to be licensed by the city for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin or any other place in which rooms, lodging or accommodations are regularly furnished for value.

#### **44-116      Penalty for Fraudulent Returns, Reports**

Any operator or other person who fails to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the City Clerk, or who renders a false or fraudulent return, is guilty of and punishable for a misdemeanor. Any person required to make, render, sign or verify any report who makes any false or fraudulent report, with intent to defeat or evade the determination of an amount due required by this chapter to be made, is guilty of and punishable for a misdemeanor.

#### **44-117      How Funds Used**

(a) The City shall expend (in the fiscal year during which the tax is first collected at a rate in excess of three (3%) percent and at all times thereafter) an amount equal to the amount by which the total taxes collected under this Ordinance exceed the taxes which would be collected at a rate of three (3%) percent for the purpose of: (1) promoting tourism, conventions, and trade shows; (2) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (3) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (4) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded in whole or in part by a grant of state funds; or (5) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purposes (3) and (4) may be so expended in any otherwise lawful manner.

(b) For purposes of this Ordinance, a "private sector nonprofit organization" shall be a chamber of commerce, a convention and visitors bureau, a regional travel association, or any other private group organized for similar purposes which is exempt from federal income tax under Section 501 (c) of the Internal Revenue Code of 1987.

(c) The determination as to whether the City has complied with the expenditure requirements of Paragraph (a) of this section shall be made for each fiscal year beginning on or after July 1, 1988, as of the end of each fiscal year, shall be prominently reflected in the audit required under Code Section 36-81-7, and shall be determined by: (A) calculating the amount of funds expended or contractually committed for expenditure as provided in Paragraph (a) of this section, whichever is applicable, during the fiscal year; and (B) expressing such amount as a percentage of tax receipts under this Ordinance during such fiscal year. The City contractually expending funds to meet the expenditure requirements of Paragraph (a) of this section shall require the contracting party to provide audit verification that the contracting party makes use of such funds in conformity with the requirements of this section.

(d) Nothing in this Ordinance shall be construed to limit the power of the City to expend more than the required amounts, or all, of the total taxes collected under this Code section for the purposes described in paragraph (a) of this section.

(e) Nothing in this Ordinance shall be construed to impair, or authorize or require the impairment of, any existing contract or contractual rights.

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<sup>1</sup> An Ordinance to Amend Chapter 44 of the City of Lawrenceville's General Code of Ordinances to update its Hotel/Motel Occupancy Tax policies was adopted on August 3, 2009.