

Sec. 18-10A. Title.

10A.1 This article shall be known as the Uniform Transient Occupancy Tax Article of the County of Lake. (Ord. No. 467, § 1, 1965)

Sec. 18-11. Definitions.

11.1 Except where the content requires otherwise, the definitions given in this section govern the construction of this article:

(a) *Person* means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, **limited liability company**, estate, trust, business trust, receiver, trustee, syndicate, religious groups, or any other group or combination acting as a unit. (Ord. No. 467, § 2, 1965)

(b) (1) ***Hotel or Lodging Facility*** means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, 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. (Ord. No. 467, § 2, 1965)

(2) Hotel does not mean any of the following: Any hospital, sanitarium, medical clinic, convalescent home, rest home, home for aged people, foster home, or other similar facility operated for the care or treatment of human beings; any asylum, jail, prison, orphanage or other facility in which human beings are detained and housed under legal restraint; any housing owned or controlled by an educational institution and used exclusively to house students, faculty or other employees, and any fraternity or sorority house or similar facility occupied exclusively by students and employees of such educational institution, and officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by any organization having qualifications for exemption from property taxes under the laws of California; any housing owned by a governmental agency and used to house its employees or for governmental purposes; any camp as defined in the Labor Code or other housing furnished by an employer exclusively for employees; any private dwelling house or other individually- owned single-family dwelling unit rented only occasionally and incidentally to the normal occupancy by the owner or his family. (Ord. No. 467, § 2, 1965)

(c) (1) ***Other Lodging*** includes, but is not limited to, a camping site, a space at a campground, or a space at a recreational vehicle park.

(2) ***Other Lodging*** does not include a campsite in a state park or any facility operated by a local governmental entity.

(d) The burden of establishing that the **occupancy housing or facility** is not a hotel, **lodging facility or other lodging** as defined herein shall be upon the operator thereof, who shall file with the Tax Collector such information as the Tax Collector may require to establish and maintain such status. (Ord. No. 467, § 2, 1965)

(e) ***Occupancy*** means the use or possession, or the right to the use or possession of any room or rooms or other living space in any hotel, **lodging**

facility or other lodging for dwelling, lodging or sleeping purposes. (Ord. No. 467, § 2, 1965; Ord. No. 2124, § 1, 12-8-92)

(f) *Rent* means the consideration charged, whether or not received, for the occupancy of space in a hotel, **lodging facility** or other lodging valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of kind or nature, without any deduction therefrom whatsoever. (Ord. No. 467, § 2, 1965; Ord. No. 2124, § 3, 12-8-92)

(g) *Operator* means the person who is proprietor of the hotel, **lodging facility** or other lodging whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her 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 article and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both. (Ord. No. 467, § 2, 1965; Ord. No. 2124, § 4, 12-8-92)

(h) *Owner* means each and every person that is the operator, has the right to be the operator, or sold or transferred the right to be the operator to the current operator.

(i) *Property Owner* is the person who owns the land or holds a possessory interest in the land upon which the hotel, lodging facility or other lodging is situated.

(j) *Guest of Operator or Property Owner* means a person who occupies a hotel, lodging facility or other lodging and is the guest of the operator, the property owner, or accompanied by the property owner or operator, or who exercises the property owner's or operator's right of occupancy, without payment of any rent.

(k) *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 thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel or other lodging shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this article may be considered. (Ord. No. 467, § 2, 1965; Ord. No. 2124, § 2, 12-8-92)

(3) The burden of establishing that the facility or space is not 'other lodging' as defined herein shall be upon the operator thereof, who shall file with the Tax Collector such information as the Tax Collector may require to establish and maintain such status. (Ord. No. 2124, § 5, 12-8-92)

Sec. 18-12. Tax Imposed and Payment of Tax.

12.1 For the privilege of occupancy in any hotel, **lodging facility** or other lodging, each transient is subject to and shall pay **or cause to be paid** a tax in the amount of nine (9) percent of the rent ~~charged by the operator.~~ Said tax constitutes a debt owed by the transient ~~to the operator or~~ to the County. (Ord. No. 614, § 1,

1970; Ord. No. 972, § 1, 8-16-77; Ord. No. 2033, § 1, 8-27-91; Ord. No. 2124, § 6, 12-8-92)

12.2 The transient shall pay the tax to the operator of the hotel, **lodging facility** or other lodging 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 upon the transient's ceasing to occupy space in the hotel, **lodging facility or other lodging**. **It is the responsibility of the operator to collect the tax. If for any reason, the operator fails to collect the tax due at the time the rent is collected, the operator and operator's successor becomes liable for the tax due. is not paid to the operator of the hotel or other lodging the Tax Collector may require that such tax shall be paid directly to the Tax Collector.** (Ord. No. 614, § 1, 1970; Ord. No. 2124, § 7, 12-8-92)

Sec. 18-13. Exemptions.

13.1 No tax shall be imposed upon any of the following:

(a) 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. (Ord. No. 467, § 4, 1965)

(b) Any Federal, City, or State of California officer or employee when on official business. (Ord. No. 467, § 4, 1965)

(c) Any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty. (Ord. No. 467, § 4, 1965)

(d) **Rooms donated to or paid for by the Red Cross or other charitable organization for the purpose of providing temporary emergency shelter.**

(e) **Complimentary stays where no Rent is received.**

(f) **The owner of a timeshare estate occupying a room or rooms in a timeshare project, as defined in Business and Professions Code section 11212 or its successor statute.**

(g) **The owner of a membership camping contract as defined in Civil code section 1812.300**

13.2 No exemption shall be granted except upon a claim therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the Tax Collector. **No exemption form is required for items (e), (f) or (g).** (Ord. No. 467, § 4, 1965)

Sec. 18-14. Duties of Operator.

14.1 Each operator shall collect the tax imposed by this article to the same extent and at the same time the rent is collected from every transient. (Ord. No. 467, § 5, 1965)

(a) The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. (Ord. No. 467, § 5, 1965)

14.2 No operator of a hotel, **lodging facility** or other lodging shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided. (Ord. No. 467, § 5, 1965; Ord. No. 2124, § 8, 12-8-92)

Sec. 18-15. Regulation and Registration.

15.1 Within thirty (30) days after the effective date of this article or within thirty (30) days after commencing business, whichever is later, each operator of any hotel, lodging facility or other lodging renting occupancy to transients shall register said hotel, lodging facility or other lodging with the Tax Collector and obtain from him or her a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. (Ord. No. 467, § 6, 1965; Ord. No. 2124, § 9, 12-8-92)

15.2 Said certificate is non-transferable and shall, among other things, state the following:

(a) The name of the operator. (Ord. No. 467, § 6, 1965)

(b) The address of the hotel or other lodging. (Ord. No. 467, § 6, 1965; Ord. No. 467, § 6, 1965; Ord. No. 2124, § 10, 12-8-92)

(c) The date upon which the certificate was issued. (Ord. No. 467, § 6, 1965)

(d) This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Article 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 authorize any person to conduct any lawful business in an unlawful manner, nor to operate a hotel, lodging facility or other lodging without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this County. This certificate does not constitute a permit." (Ord. No. 467, § 6, 1965; Ord. No. 2124, § 11, 12-8-92)

(e) It shall be the responsibility of the operator and owner of the hotel, lodging facility or other lodging to report in writing all changes of operators, or operations to the Tax Collector immediately, including, but not limited to, any change in operators or owners, the mailing address or number of rooms, number of campsites or reduction or increase in the amount of lodging available at the hotel, lodging facilities or other lodging.

(f) A Registration Certificate may be revoked by the Tax Collector upon failure to comply with any provisions of this Chapter. Revocation by the Collector may be appealed to the Board of Supervisors as provided in Section 18-19. An appeal of revocation as provided herein will stay the revocation until the Board of Supervisors issues a decision.

(g) Operation without a valid Registration Certificate shall be a misdemeanor and shall be punishable as provided by in Section 18-23.1. Each day of operation without a valid Registration Certificate shall be deemed a separate offense.

Sec. 18-16. Reporting and Remitting.

16.1 Each operator shall, on or before the last day of the month following the close of each calendar 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 for transient occupancies. (Ord. No. 467, § 7, 1965)

(a) At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Collector. (Ord. No. 467, § 7, 1965)

16.2 The Tax Collector may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. (Ord. No. 467, § 7, 1965)

16.3 Returns and payments are due immediately upon cessation of business for any reason. (Ord. No. 467, § 7, 1965)

16.4 All taxes collected by operators pursuant to this article shall be held in trust as a fiduciary, in a separate trust account, apart from the rents or business revenues of the hotel and for the benefit of the County, owing to the County the highest duty in law as a trustee, ~~for the account of the County~~ until payment thereof is made to the Tax Collector. (Ord. No. 467, § 7, 1965)

Sec. 18-17. Penalties and Interest.

17.1 *Original Delinquency:* ~~(a)~~ Any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax. (Ord. No. 467, § 8, 1965)

17.2 *Continued Delinquency:* ~~(a)~~ Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax and the ten (10) percent penalty first imposed. (Ord. No. 467, § 8, 1965)

17.3 *Fraud:* If the Tax Collector determines that the non-payment of any remittance due under this article is due from fraud, a penalty of twenty-five (25) per cent of the amount of the tax shall be added thereto in addition to the penalties stated in provisions 17.1 and 17.2 of this section. (Ord. No. 467, § 8, 1965)

17.4 *Interest:* In addition to the penalties imposed, any operator who fails to remit any tax imposed by this article shall pay interest at the rate of one-half of one (1) per cent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid. (Ord. No. 467, § 8, 1965)

17.5 *Penalties Merge with Tax:* Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid. (Ord. No. 467, § 8, 1965)

17.6 *Baste Tax:* For the purposes of this section, is the tax to be collected by an Operator pursuant to Section 18-12. (i.e., 9% of the taxable rents to be collected within the reporting period).

17.7 *Security Bond:* The Tax Collector is authorized to require any Operator who has failed to file two (2) or more returns or payments, in any twelve (12) month period, to deliver to him or her a security bond equal to the three (3) times the anticipated tax collected for the highest delinquent reporting period. Failure to post a bond in a form acceptable to the Tax Collector when requested to do so shall be grounds for revocation of an Operator's Certificate of Registration as provided for in section 18-15.2(f).

Sec. 18-18. Failure to Collect and Report Tax.

18.1 If any operator **and/or owner** shall fail or refuse to collect said tax and to make, within the time provided in this article, any report and remittance of said tax or any portion thereof required by this article, 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. (Ord. No. 467, § 9, 1965)

18.2 As soon as the Tax Collector shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any operator **and/or owner** 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 **and/or owner** the tax, interest and penalties provided for by this article. (Ord. No. 467, § 9, 1965)

18.3 In case such determination is 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 **and/or owner** so assessed at his last known place of 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. (Ord. No. 467, § 9, 1965)

18.4 If application by the operator **and/or owner** for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Collector shall become final and conclusive and immediately due and payable. (Ord. No. 467, § 9, 1965)

18.5 If such application is made, the Tax Collector shall give not less than five (5) days' written notice in the manner prescribed herein to the operator **and/or owner** 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. (Ord. No. 467, § 9, 1965)

18.6 At such hearing, the operator **and/or owner** 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 person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 18-19. (Ord. No. 467, § 9, 1965)

Sec. 18-19. Appeal.

19.1 Any operator **and/or owner** aggrieved by any decision of the Tax Collector with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the County Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. (Ord. No. 467, § 10, 1965)

19.2 The Board of Supervisors shall fix a time and place for hearing such appeal, and the County Clerk shall give notice in writing to such operator at his last known place of address. (Ord. No. 467, § 10, 1965)

19.3 The operator and/or owner has the burden of proving that the Tax Collector's determination is incorrect and the burden of producing sufficient evidence to establish the correct tax liability.

19.4 The findings 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 notice. (Ord. No. 467, § 10, 1965)

Sec. 18-20. Records.

20.1 It shall be the duty of every operator and owner liable for the collection and payment to the County of any tax imposed by this article to keep and preserve, for a period of ~~three~~ five years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the County, including but not limited to a daily record of occupancy rents collected, transient tax collected and exemptions. ~~which records~~ The Tax Collector shall have the right to inspect at all reasonable times. (Ord. No. 467, § 11, 1965)

20.2 All tax returns and information furnished by any operator pursuant to this article shall be confidential and shall not be open to public inspection nor the specific contents thereof disclosed by any officer or employee except as necessary in the performance of official duty pursuant to this article, or in the course of any proceedings, hearing or litigation involving the existence or amount of the tax liability of such operator, or with the written consent of the operator or his authorized representative. (Ord. No. 467, § 11, 1965)

~~22.3 the County shall be entitled to recover from anyone found liable for the debt, any costs, including attorney's fees, personnel costs, or other expenses incurred by the County because of the failure to timely remit tax proceeds to the County.~~

Sec. 18-21. Refunds.

21.1 Whenever the amount of any tax, interest or penalty has been overpaid more than once or has been erroneously or illegally collected or received by the County under this article it may be refunded as provided in provisions 21.2 and 21.3 of this section provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Collector within three years of the date of payment. The claim shall be on forms furnished by the Tax Collector. (Ord. No. 467, § 12, 1965)

21.2 Any operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received, when it is established in a manner prescribed by the Tax Collector that the person from who the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator. (Ord. No. 467, § 12, 1965)

21.3 A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected, or received by the County by filing a claim in the manner provided in provision 21.1 of this section but only when the tax was paid by the transient directly to the Tax Collector, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Tax Collector that the transient has been unable to obtain a refund from the operator who collected the tax. (Ord. No. 467, § 12, 1965)

21.4 No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. (Ord. No. 467, § 12, 1965)

Sec. 18-22. Actions to Collect.

22.1 Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owed by the transient to the County. Any such tax collected by an operator which has not been paid to the County shall be deemed a debt owned by the operator to the County. (Ord. No. 467, § 13, 1965)

22.2 Any person owing money to the County under the provisions of this article shall be liable to an action brought in the name of the County of Lake for the recovery of such amount. (Ord. No. 467, § 13, 1965)

Sec. 18-23. Violations and Penalties.

23.1 Any person violating any of the provisions of this article shall be guilty of a misdemeanor and shall be punishable therefore by a fine of not more than five hundred (500) dollars or by imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment. (Ord. No. 467, § 14, 1965)

23.2 Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplement return or other data required by the Tax Collector, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. (Ord. No. 467, § 14, 1965)

23.3 Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article to be made, is guilty.

Sec. 18-24. Change of Ownership or Operator.

24.1 Upon the sale of any hotel, lodging facility or other lodging, unless otherwise provided by law:

(a) A new owner or operator is required to submit an updated registration form to the Tax Collector immediately.

(b) A Tax Clearance Certificate shall be obtained from the Tax Collector prior to the transfer of ownership providing that all transient occupancy taxes are paid in full.

(c) If a Tax Clearance Certificate can not be obtained because transient occupancy taxes are not paid in full, then the successor shall withhold a sufficient portion of the purchase price to equal the amount of outstanding transient occupancy tax and/or penalties, and remit the balance due to the Tax Collector prior to the transfer of title or right to be the successor operator.

(d) It is the joint and several liability of both the seller and buyer to remit any tax due through the date of sale

(e) A Certificate of Delinquent Transient Occupancy Tax Lien may be filed against both the seller and/or buyer in an amount determined by the Tax Collector.

Sec. 18-25 Tax Lien .

25.1 The Tax Collector is authorized to record a Certificate of Delinquency of Transient Occupancy Tax Lien with the Lake County Recorder against any operator, owner and/or property owner who fails to remit taxes, penalties, or interest due under this article within the times required herein. The Tax Collector shall add to the amount of the lien the costs incurred by the County in collecting

the tax due as specified in Sec. 18-22.3 above. The Certificate of Delinquency of Transient Occupancy Tax Lien may be filed by the Tax Collector:

(a) Ten (10) days after the serving or mailing of the notice required by Section 18-18, if the operator and/or owner does not file the application for appeal permitted by Section 18-19.

(b) If the operator files the application for appeal permitted by Section 18-19, after thirty (30) days from the Tax Collector's determination of the amount of tax to be remitted pursuant to 18-18, unless the operator and/or owner files an appeal pursuant to Section 18-19.

(c) If the operator files an appeal pursuant to Section 18-19.1, ten (10) days after service of the Board of Supervisor's findings pursuant to Section 18-19.4

25.2 (a) The Certificate of Delinquency of Transient Occupancy Tax Lien shall be filed within three years after the tax becomes due. The Certificate of Delinquency of Transient Occupancy Tax Lien shall specify the amount due, the name and last known address of the operator(s), owner(s) and/or property owner(s) liable for the same, and a statement that the Tax Collector has complied with all provisions of this article with respect to the computation and levy of the tax owed by the operator, owner and/or property owner. From the time of the recording of the Certificate of Delinquency of Transient Occupancy Tax Lien, the amount required to be paid, together with penalties, constitutes a lien upon all real property in the county owned by the operator or thereafter acquired before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten years from the filing of the Certificate of Delinquency of Transient Occupancy Tax Lien, unless sooner released or otherwise discharged. Within ten years of the date of the recording of the Certificate of Delinquency of Transient Occupancy Tax Lien (or within ten years of the date of the last extension of the lien), the Tax Collector may extend the lien by filing for record a new certificate in the office of the Lake County Recorder, and from the time of filing the lien under the original Certificate of Delinquency of Transient Occupancy Tax Lien shall be extended for an additional ten years, unless sooner released or otherwise discharged. The lien shall not be removed until the delinquent taxes, penalties for delinquency, and costs of collection are fully paid or the property is sold for payment of the delinquent taxes, penalties for delinquency, and costs of collection.

(b) At any time within three years after the recording of a Certificate of Delinquency of Transient Occupancy Tax Lien under subsection (a) above, the Tax Collector may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of any tax and penalties required to be paid the County under this article. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The Tax Collector may pay or advance to the sheriff or marshal such fees, commission, and expenses for services as are provided by law for similar services pursuant to a writ of execution.

(c) In lieu of issuing a warrant under subsection (b), at any time within the three years after a Certificate of Delinquency of Transient Occupancy Tax Lien was

recorded under subsection (a), the Tax Collector may collect the delinquent amount by seizing, or causing to be seized, any property, real or personal, of the Operator(s) and sell any non-cash or non-negotiable property, or a sufficient part of it, at public auction to pay the amount of tax due, together with any penalties, interest, and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the operator(s) not exempt from execution under the provisions of the Code of Civil Procedure.”