

ARTICLE F. TRANSIENT OCCUPANCY TAX

Sec. 4-2-76.1. Definitions.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (1) *Accommodations*: means any room or space for which tax is imposed on the retail sale of the same pursuant to this article.
- (2) *Accommodations fee*: means the room charge less the discount room charge, if any, provided that the accommodations fee shall not be less than zero dollars (\$0).
- (3) *Accommodations intermediary*: means any person other than an accommodations provider that [\(i\) facilitates the sale of an accommodation; and \(ii\) either \(a\) charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale; \(b\) collects a room charge from the customer; or \(c\) charges a fee, other than an accommodations fee, to the customer, which fee it retains as compensation for facilitating the sale.](#) For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations via a transaction directly, including via one (1) or more payment processors, between a customer and an accommodations provider. Accommodations intermediary does not include a person (1) if the accommodations are provided by an accommodations provider operating under a trademark, trade name, or service mark belonging to such person; or (2) who facilitates the sale of an accommodation if (i) the price paid by the consumer to such person is equal to the price paid by such person to the accommodations provider for the use of the accommodations and (ii) the only compensation received by such person for facilitating the sale of the accommodations is a commission paid from the accommodations provider to such person; [or \(3\) who is a licensed real estate licensee pursuant to Article 1 \(Section 54.1-2100 et seq.\) of Chapter 21 of Title 54.1 of the Code of Virginia, when acting within the scope of such license.](#)
- (4) *Accommodations provider*: means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess. An accommodations provider may be any public or private hotel, inn, apartment hotel, hostelry, tourist home or house, tourist camp, tourist cabin, travel campground, motel, short-term rental, homestay, or other lodging place within the city, and the owner and operator thereof, who, for compensation, furnishes lodging to any transients as hereinafter defined.
- (5) *Affiliate*: means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person through ownership or voting securities or by contract or otherwise.
- (6) *Commissioner of revenue*: The commissioner of revenue of the city or any of his or her duly authorized deputies or agents.
- (7) *City treasurer*: means the treasurer of the city and any of his or her duly authorized deputies and agents.

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- (8) *Discount room charge*: means the full amount charged by the accommodations provider to the accommodations intermediary, or an affiliate thereof, for furnishing the accommodations.
- (9) *Person*: means any individual, firm, partnership, association, corporation, person acting in a representative capacity or any group of individuals acting as a unit.
- (10) *Retail sale*: means ~~a sale to any person for any purpose other than for resale~~the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration.
- (11) *Room or space rental charge*: means the full retail price charged to the customer for the use of the accommodations, before taxes. "Room charge" includes any fee charged to the customer and retained as compensation for facilitating the sale, whether described as an accommodations fee, facilitation fee, or any other name. Any additional charges made in connection with the rental of accommodations are deemed to be a part of the charge for the room and are subject to the tax. For example, additional charges for movies, local telephone calls, and similar services are subject to the tax.~~by the accommodations intermediary for the use of the accommodations, including any accommodations fee as well as any charges made in connection with the rental of the accommodations, before taxes. The room charge shall be determined in accordance with 23VAC10-210-730 and the related rulings of the Virginia Department of Taxation on the same.~~
- (12) *Transient*: means any person who, for any period of not more than thirty (30) consecutive days either at his own expense or at the expense of another, obtains ~~accommodations from any accommodations provider~~the use or possession of a room or space occupied for lodging in any accommodations as hereinabove defined, for which lodging or use of space a price is charged.
- (13) *Travel campground*: Any area or tract of land used to accommodate two (2) or more camping parties, including tents, travel trailers or other camping outfits.

(Ord. of 12-14-82; Ord. of 3-26-19(2); Ord. of 9-8-20(1); Ord. of 11-9-21)

Editor's note(s)—Section 4-2-76 as added by an ordinance of Dec. 14, 1982, has been renumbered as § 4-2-76.1 at the discretion of the editor, inasmuch as the Code already contained a § 4-2-76.

Sec. 4-2-77. Levy and rate.

In addition to all other taxes of every kind, now or hereafter imposed by law, there is hereby imposed and levied on each and every transient a tax equivalent to seven (7) percent of the total price paid by the transient for the use or possession of any room or space~~d~~ occupied for accommodations by or for such transient.

(Ord. of 6-26-84; Ord. of 6-12-90; Ord. of 7-28-98; Ord. of 6-10-03; Ord. of 6-12-12(1); Ord. of 6-27-17(1); Ord. of 11-9-21)

Sec. 4-2-78. Exceptions.

No tax shall be payable hereunder on room or space rental paid to any hospital, medical clinic, nursing or convalescent home, extended health care facility, sanatorium or sanitorium, home of the aged, infirmed, orphaned, disabled, or intellectual disability or other like facility; or in any educational institution

(Ord. of 12-14-82; Ord. of 11-9-21)

Sec. 4-2-79. Collection.

- (a) For any retail sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider shall collect the tax imposed pursuant to this article, computed on the total price paid for the use or possession of the accommodation and shall remit the same to the city and shall be liable for the same.
- (b) For any retail sale of accommodations facilitated by an accommodations intermediary, the accommodations intermediary shall be deemed under this article as a facility making a retail sale of an accommodation. The accommodations intermediary shall collect the tax imposed pursuant to this article, computed on the room charge. ~~When the accommodations are at a hotel, the accommodations intermediary shall remit the taxes on the accommodations fee to the city and shall remit any remaining taxes to the hotel, which shall remit such taxes to the city. When the accommodations are at a short-term rental, as defined in Code of Virginia § 15.2-983, or at any other accommodations, the accommodations intermediary shall remit the taxes on the room charge to the city. And shall remit the same to the city and shall be liable for the same.~~
- (c) ~~An accommodation intermediary shall not be liable for taxes under this article remitted to an accommodations provider but that are then not remitted to the city by the accommodations provider. For any retail sale of accommodations facilitated by an accommodations intermediary, an accommodations provider shall be liable for that portion of the taxes under this article that related to the discount room charge only to the extent that the accommodations intermediary has remitted such taxes to the accommodations provider. For any transaction for the retail sale of accommodations involving two or more parties that meet the definition of accommodations intermediary, nothing in this section shall prohibit such parties from making an agreement regarding which party shall be responsible for collecting and remitting the tax, so long as the party so responsible is registered as a dealer with the locality. In such event, the party agreeing to collect and remit the tax shall be the sole party liable for the tax, and the other parties to such agreement shall not be liable for such tax.~~
- (d) For any retail sale of accommodations facilitated by an accommodations intermediary, nothing herein shall relieve the accommodations provider from liability for retail sales and use taxes on any amounts charged directly to the customer by the accommodations provider that are not collected by the accommodations intermediary.
- (~~e~~) In any retail sale of any accommodations in which an accommodations intermediary does not facilitate the sale of the accommodations, the accommodations provider shall separately state the amount of the tax in the bill, invoice, or similar documentation and shall add the tax to the total price paid for the use of possession of the accommodations. In any retail sale of any accommodations in which an accommodations intermediary facilitates the sale of the accommodation, the accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room charge; thereafter, such tax shall be a debt from the customer to the accommodations intermediary, recoverable at law in the same manner as other debts.
- (~~e~~f) The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect such taxes, until remitted as required in this article.

(Ord. of 12-14-82; Ord. of 11-9-21)

Sec. 4-2-80. Reports.

The person collecting any tax levied under this article shall make out a report upon forms, setting forth information as the commissioner of revenue may prescribe and require. Such reporting shall show the total price

paid by the transient for the use or possession of a room or space occupied for accommodations by or for a transient and the total tax required to be collected. The report shall be signed and delivered the same to the commissioner of revenue with a remittance of such tax to the city treasurer.

Such reports and remittances shall be made on or before the twentieth (20th) day of the month following each calendar month and covering the amount of tax collected during the preceding calendar month.

It shall be the duty of every person liable for the collection and payment to the city of any tax imposed by this article to keep and to preserve, for a period of five (5) years, such suitable records as may be necessary to determine the amount of such tax as he may have been responsible for collecting and paying to the city. The commissioner of the revenue or their duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person for the purpose of administering and enforcing the provisions of this article, and to make transcripts of all or any parts thereof.

An accommodations provider shall not be required to submit a report to the commissioner of revenue if (i) all retail sales of accommodations owned by the accommodations provider are facilitated by an accommodations intermediary and (ii) the accommodations provider attests to the locality that all such sales are facilitated by an accommodations intermediary. Such attestation shall be effective for 12 months beginning with the month in which the attestation is made. Thereafter, such attestation shall be due annually on a date determined by the commissioner of revenue, on such forms and in such manner as the commissioner of revenue may prescribe and require. However, such accommodations provider shall make out and submit a report in accordance with this subsection for the retail sale of any accommodations not facilitated by an accommodations intermediary and shall remit such tax as otherwise required by this article.

(Ord. of 12-14-82; Ord. of 3-22-16(1); Ord. of 11-9-21)

Sec. 4-2-81. Interest and penalties.

If any person shall fail or refuse to remit to the city treasurer the tax required to be collected and paid under this article, within the time and in the amount specified in this article, there shall be added to such tax by the commissioner of the revenue a penalty of ten (10) percent, or ten dollars (\$10.00), whichever is greater, provided, however, that the penalty shall in no case exceed the amount of the tax assessable; and, interest at the rate of ten (10) percent per year on the amount of the tax and penalty from the date upon which the tax is due, as provided in this article, until paid.

(Ord. of 12-14-82; Ord. of 3-22-16(1))

Sec. 4-2-82. Determination of tax due by commissioner of revenue.

If any person required to collect and remit the tax imposed by this article fails to file a statement and a remittance, or if the commissioner of revenue has reasonable cause to believe that an erroneous statement has been filed, the commissioner of revenue may proceed to determine the amount due the city and in connection therewith shall make investigation and take testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard be given any person who may become liable for the amount owed prior to any determination by the commissioner of revenue.

(Ord. of 12-14-82)

Sec. 4-2-83. Cessation of business; report and tax due immediately.

Whenever any person required to collect and pay to the city a tax under section 4-2-77 shall quit or otherwise dispose of his business, any tax under the provision of this article shall become immediately due and such person shall immediately make a report and pay the tax due.

(Ord. of 12-14-82)

Sec. 4-2-84. Commissioner of revenue; other powers and duties.

It shall be the duty of the commissioner of revenue to ascertain the name of every person operating a hotel or travel campground in the city liable for the collection of the tax levied by section 4-2-77. The commissioner of revenue shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied, and a copy of such rules and regulations shall be on file and available for public examination in the office of the commissioner of revenue. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this article.

(Ord. of 12-14-82)

Sec. 4-2-85. Penalty.

- (a) Any person willfully failing or refusing to file a return as required by this article shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is one thousand dollars (\$1,000.00) or less. Any person violating or failing to comply with any other provision of this article shall be guilty of a class 1 misdemeanor.
- (b) Except as provided in subsection (a) above, any corporate or partnership officer, as defined in Virginia Code § 58.1-3906, or any other person required to collect, account for, or pay over the transient occupancy tax imposed under this article, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a class 1 misdemeanor.
- (c) Any person who willfully utilizes a device or software to falsify the electronic records of cash registers or other point-of-sale systems or otherwise manipulates transaction records that affect any local tax liability shall, in addition to any other penalties provided by law, be guilty of a class 1 misdemeanor. In addition to the criminal penalty provided for herein and any other civil or criminal penalty provided in this title, any person violating this subsection shall pay a civil penalty of twenty thousand dollars (\$20,000.00), to be assessed by the commissioner of the revenue and collected by the treasurer as other local taxes are collected and deposited into the treasury of the political subdivision of the commonwealth served by the treasurer.
- (d) Each violation of or failure to comply with this article shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this article.

(Ord. of 12-14-82; Ord. of 11-23-99; Ord. of 3-22-16(1))