

## CHAPTER 545

## LODGING TAX

## Section

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545.01 Definitions.

The following words, terms, and phrases, as used herein, have the following meanings:

1. The term "Director" means the Director of Finance.
2. The term "lodging" means the furnishing for consideration of lodging by a hotel, motel, municipal campground, rooming house, tourist court, or resort; except where such lodging shall be furnished to the same lodger for a continuous period of 30 days or more. The furnishing of rooms by religious, education or non-profit organizations shall not constitute "lodging" for purposes of this Section in those cases where the use is directly associated with the primary purpose and functions of the sponsoring entity and utilized facility.
3. The term "operator" means a person who provides lodging to others for consideration.
4. The term "rent" means the consideration charged for lodging whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than those included in the room charge.
5. The term "lodger" means the person obtaining lodging from an operator.

545.02 Imposition of Tax.

Pursuant to Minnesota Statutes § 469.190 a tax is hereby imposed on the rent charged by an operator for providing lodging. A tax of three percent (3%) shall be imposed commencing at 12:00 a.m. on January 1, 2001. The tax collected by the operator shall be a debt owed by the operator to the City and shall be extinguished only by payment to the City. In no case shall the tax imposed by this section exceed the amount of tax which the operator is authorized and required by this chapter to collect from a lodger.

545.03 Collections.

Each operator shall collect the tax imposed by this chapter at the time the lodger pays the rent. In computing the tax to be collected, amounts of tax less than one cent shall be considered an additional cent. The tax collection shall be deemed to be held in trust by the operator for the City. The amount of tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a receipt of payment from the operator.

545.04 Exceptions and Exemptions.

Subd. 1.        Exceptions. No tax shall be imposed on rent for lodging paid by any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty.

Subd. 2.        Exemptions. An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the City to tax. No exemption shall be granted except upon a claim therefore made at the time the rent is collected and such a claim shall be made in writing and under penalty of perjury on forms provided by the City. All such claims shall be forwarded to the City when the returns and collections are submitted as required by this Section.

545.05 Advertising No Tax.

It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will be added to the rent or that, if added, it or any part thereof will be refunded.

545.06 Payment and Returns.

The taxes imposed by this Section shall be paid by the operator to the City monthly not later than 25 days after the end of the month in which the taxes were collected. At the time of payment the operator shall submit a return upon such forms and containing such information as the Director may require.

A.        The return shall contain the following minimum information:

1.        The total amount of rent collected for lodging during the period covered by the return.

2. The amount of tax required to be collected and due for the period.
  3. The signature of the person filing the return or that of his agent duly authorized in writing.
  4. The period covered by the return.
  5. The amount of uncollectible rental charges subject to the lodging tax.
- B. The operator may offset against the taxes payable, with respect to any reporting period, the amount of taxes imposed by this Section previously paid as a result of any transaction the consideration for which became uncollectible during such reporting period, but only in proportion to the portion of such consideration which became uncollectible.

#### 545.07 Records and Examination of Records.

Every operator shall keep books and records showing the rents charged and occupancies taxable under this Section. The Director and those persons acting on behalf of the Director authorized in writing by the Director may examine the books, papers, and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this Section. Every such operator is directed and required to give to the said Director or to his duly authorized agent or employee the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

#### 545.08 Examination of Return, Adjustments, Notices and Demands.

The Director shall, after a return is filed, examine the same and make any investigation or examinations of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid. If the tax due is found to be greater than that paid, such excess shall be paid to the City within ten days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the City within ten days after determination of such refund.

#### 545.09 Refunds.

Any person may apply to the Director for a refund of taxes paid for a prescribed period in excess of the amount legally due for the period provided that no application for a refund shall be considered unless filed within one year after such tax was paid, or within one year from filing of the return, whichever period is longer. The Director shall examine the claim in whole or in part and shall mail a notice thereof by registered mail to such person at the address stated upon the return. If such claim is allowed in whole or in part, the Director shall credit the amount of the allowance against any taxes due under this Section from the claimant and the balance of said allowance, if any, shall be paid by the Director to the claimant.

545.10 Failure to File a Return.

If any operator required by this Section to file a return shall fail to do so within the time prescribed, or shall make, willfully or otherwise, an incorrect, false or fraudulent return the operator shall, upon written notice and demand, file such return or corrected return within five days of receipt of such written notice and shall at the same time pay any tax due on the basis thereof. If such person shall fail to file such a return or corrected return, the Director shall make a return or corrected return, for such person from such knowledge and information as the Director can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the period covered by such return) shall be paid within five days of the receipt of written notice and demand for such payment. Any such return or assessment made by the Director shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

- A. If any portion of a tax imposed by this Section, including penalties thereon, is not paid within 30 days after it is required to be paid, the City may institute such legal action as may be necessary to recover the amount due plus interest, penalties, and the costs of disbursements in any action.
- B. Upon a showing of good cause, the Director may grant an operator one thirty (30) day extension of time within which to file a return and make payment of taxes as required by this Section provided that interest during such period of extension shall be added to the taxes due at the rate of ten percent per annum.

545.11 Tax Penalties.

- A. If any tax imposed by this Section is not paid within the time herein specified for the payment, or any extension thereof, there shall be added thereto a penalty equal to ten percent of the amount remaining unpaid.
- B. In case of any failure to file a return within the time prescribed by this Section, there shall be added to the tax in addition to the ten percent penalty provided in subparagraph A above, an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. If the penalty as computed does not exceed \$10, a minimum penalty of \$10 shall be assessed.
- C. If any person willfully fails to file any return or make any payment required by this Section, or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat any such a tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50 percent of any tax (less any amounts paid on the basis of such false or fraudulent return) found due for the period of which such return related. The penalty imposed by this subdivision shall be collected as a part of the tax, and shall be in addition to any other penalties provided by this Section.
- D. All payments received shall be credited first to penalties, next to interest, and then to the tax due.

- E. The amount of tax not timely paid, together with any penalty provided by this Section shall bear interest at the rate of 8 percent per annum from the time such tax should have been paid. Any interest and penalty shall be added to the tax and be collected as a part thereof.

545.12 Administration of Tax.

The Director shall administer and enforce the assessment and collection of the taxes imposed by this Section. The Director shall cause to be prepared blank forms for the returns and other documents as required by this Section and shall distribute the same throughout the City and furnish them on application, but failure to receive or secure them shall not relieve any person from any obligation required of him under this Section.

545.13 Use of Proceeds.

Ninety-five percent (95%) of the proceeds obtained from the collection of taxes pursuant to this Section shall be used in accordance with Minnesota Statutes § 469.190 as the same may be amended from time to time. Any recipient of proceeds shall submit to the Council a quarterly financial report and annual budget detailing the expenditures of tax funds allocated by the City.

545.14 Appeals.

- A. Any operator aggrieved by any notice, order or determination made by the Director under this Section may file a petition for review of such notice, order or determination detailing the operator's reasons for contesting the notice, order or determination. The petition shall contain the name of the petitioner, the petitioner's address and the location of the lodging subject to the order, notice or determination.
- B. The petition for review shall be filed with the City Administrator within ten days after the notice, order or determination for which review is sought has been mailed or served upon the person requesting the review.
- C. Upon receipt of the petition, the City Administrator or his designee shall set a date for a hearing and give the petitioner at least five days prior written notice of the date, time and place of the hearing which hearing shall be within 14 days of receipt of the Petition.
- D. At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order, or determination should be modified or withdrawn. The petitioner may be represented by counsel of petitioner's choosing at petitioner's own expense.
- E. The hearing shall be conducted by the City Administrator or his designee, provided only that the person conducting the hearing shall not have participated in the drafting of the order, notice or determination for which review is sought.

- F. The person conducting the hearing shall make written findings of fact and conclusions based upon the applicable provisions of this Section and the evidence presented within 14 days of the hearing. The person conducting the hearing may affirm, reverse or modify the notice, order or determination for which review is sought.
  
- G. Any decision rendered by the City Administrator or his designee pursuant to this subdivision may be appealed to the City Council. A petitioner seeking to appeal a decision must file a written notice of appeal with the City Administrator within ten days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the Council agenda as soon as is practical. The Council shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the Council that findings and conclusions were incorrect, the Council may modify, reverse or affirm the decision of the City Administrator or his designee upon the same standards as set forth in Subparagraph F above.

The Waconia City Code, Chapter I entitled "General Provisions And Definitions Applicable To The Entire City Code Including Penalty For Violation" is hereby adopted in its entirety, by reference, as though repeated verbatim herein.

(Chapter 546 through 549 are reserved for future use.)