

ARTICLE V. - HOTEL-MOTEL TAX⁽³⁾

Footnotes:

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State Law reference— Authorization for municipal taxation, 68 O.S. § 2701 et seq.

Sec. 74-113. - Citation.

This article shall be known and cited as the "Muskogee Hotel Tax."

(Prior Code, § 26-61; Code 1993, § 10-501)

Sec. 74-114. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Hotel means any building or buildings, structures, trailer, or other facility in which the public may, for consideration, obtain sleeping accommodations in which five or more rooms are used for the accommodation of such guests whether such rooms are in one or several structures. The term "hotel" shall include hotels, apartment hotels, motels, tourist homes, houses or courts, lodginghouses, inn, roominghouses, trailer houses, trailer motels, dormitory space where bed space is rented to individuals or groups, apartments not occupied by permanent residents, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. The term "hotel" shall not include hospitals, sanitariums or nursing homes.

Occupancy means the use or possession, or the right to the use or possession of any 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 room.

Occupant means a person who, for a consideration, uses, possesses, or has the right to the use or possession of any room in a hotel under any lease, concession, permit, right of access, license to use, or other agreement.

Operator means any person operating a hotel in the city, included, but not limited to, the owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.

Permanent resident means any occupant who has or shall have the right of occupancy of any room in a hotel for at least 30 consecutive days during the current calendar year or preceding year.

Rent means the consideration received for 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 any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

Return means any return filed or required to be filed as herein provided.

Room means any room of any kind in any part or portion of a hotel which is available for or let out for use or possessed for any purpose other than a place of assembly. As used herein, the term "place of assembly" means a room or space which is capable of being occupied by 75 or more persons and which is used for educational, recreational or amusement purposes and shall include: dance halls; cabarets; night

clubs; restaurants; any room or space for public or private banquets, feasts, socials, card parties or weddings; lodge and meeting halls or rooms; skating rinks; gymnasiums; swimming pools, billiard, bowling and table tennis rooms; halls or rooms used for public or private catering purposes; funeral parlors; markets; recreational rooms; concert halls; broadcasting studios, and all other places of similar type of occupancy.

Tax means the tax levied pursuant to this article.

Treasurer means the treasurer of the City of Muskogee.

(Prior Code, § 26-62; Code 1993, § 10-502)

Sec. 74-115. - Tax rate.

There is hereby levied an excise tax of eight percent upon the gross proceeds or gross receipts derived from all rent for every occupancy of a room in a hotel in the city, except that the tax shall not be imposed where the rent is less than the rate of \$3.00 per day.

(Prior Code, § 26-63; Code 1993, § 10-503; Ord. No. 3855-A, § 1, 10-25-2010)

Sec. 74-116. - Exemptions.

The following shall be exempt from the tax levied in this article:

- (1) Permanent residents;
- (2) The United States government or any agency or division thereof;
- (3) The state or any political subdivision thereof;
- (4) Any organization, corporation or association organized and operated exclusively for religious, charitable, philanthropic or educational purposes, provided that its primary purpose is not carrying on a trade or business for profit.

(Prior Code, § 26-64; Code 1993, § 10-504)

Sec. 74-117. - Certificate of exemption required.

Anyone claiming to be exempt from the tax must obtain a certification from the treasurer that the organization, association or corporation with which he is affiliated is exempt from the tax. Prior to issuing such a certificate, the treasurer shall require a certification from the said organization, association or corporation that the occupant is its agent, representative or employee and that his occupancy of the room is required in connection with the affairs of said organization, association or corporation.

(Prior Code, § 26-65; Code 1993, § 10-505)

Sec. 74-118. - Operator responsible for collection, tax designated separately on bills.

- (a) The operator shall be responsible for the collection of the tax from the occupant and shall be liable to the city for the tax.
- (b) The operator shall separately designate, charge and show the tax on all bills, statements, receipts or any other evidence of charges or payment of rent for occupancy issued or delivered by the operator.

(Prior Code, §§ 26-66, 26-67; Code 1993, § 10-506)

Sec. 74-119. - Records to be kept.

Every operator shall keep records of every occupancy and of all rent paid, charged, or due thereon and of the tax payable thereon in such form as the director may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the treasurer, or a duly authorized agent or employee of the city, and shall be preserved for a period of three years except that the treasurer may consent to their destruction within that period or may require that they be kept longer.

(Prior Code, § 26-68; Code 1993, § 10-507)

Sec. 74-120. - Returns.

- (a) Every operator shall file with the treasurer a return of occupancy and of rents and of the taxes payable thereon for the period ending June 30, September 30, December 31 and March 31 of each year from the effective date of the ordinance from which this article is derived.
- (b) The treasurer may permit or require returns to be made by shorter or longer periods and upon such dates as he may specify. The form of return shall be prescribed by the treasurer and shall contain such information as he may deem necessary for the proper administration of this article. The treasurer may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

(Prior Code, § 26-69; Code 1993, § 10-508)

Sec. 74-121. - Payment of tax.

At the time of filing a return of occupancy and of rents, each operator shall pay to the treasurer the taxes imposed by this article upon the rents included in such return, as well as all other monies collected by the operator acting or purporting to act under the provisions of this article. All the taxes for the period for which a return is required to be filed shall be due from the operator and payable to the treasurer on or before the date fixed for the filing of the return for such period without regard to whether a return is filed or whether the return which is filed correctly shows the amount of rents and the taxes due thereon.

(Prior Code, § 26-70; Code 1993, § 10-509)

Sec. 74-122. - Delinquent taxes and interest.

- (a) The tax levied by this article shall be due and payable at the time filing of the returns provided for in this article is required. All taxes not paid within five days from the time they become due shall be delinquent.
- (b) If any tax levied by this article becomes delinquent, the person responsible and liable for such tax shall pay a fine of \$250.00 per occurrence and shall pay interest on such unpaid tax at the rate of ten percent per month on the unpaid balance from the date of delinquency.

(Prior Code, §§ 26-79, 26-80; Code 1993, § 10-510; Ord. No. 3742-A, 8-14-2006)

Sec. 74-123. - Delivery of notices.

Notices provided for under this article shall be deemed to have been given when such notice has been delivered personally to the operator or deposited in the United States mail to the last known address of the operator.

(Prior Code, § 26-74; Code 1993, § 10-511)

Sec. 74-124. - Bond required.

Where the treasurer believes that any operator is about to cease business, leave the state, or remove or dissipate assets, or for any other similar reason he deems it necessary in order to protect revenues under this article, he may require such operator to file with the city a bond issued by a surety company authorized to transact business in the state in such amount as the treasurer may fix to secure the payment of any tax or penalties and interest due, or which may become due from such operator. In the event that the treasurer determines that an operator is to file such bond, he shall give notice to such operator specifying the amount of bond required. The operator shall file such bond within five days after the giving of such notice unless within such five days the operator shall request in writing a hearing before the city council, at which the necessary propriety and amount of the bond shall be determined by the city council. Such determination shall be final and shall be complied with within 15 days thereafter. In lieu of such bond, securities approved by the treasurer, or cash in such amount as he may prescribe, may be deposited with the treasurer, who may at any time after five days' notice to the depositor, apply them to any tax and/or any penalties due and for that purpose the securities may be sold at private or public sale.

(Prior Code, § 26-71; Code 1993, § 10-512)

Sec. 74-125. - Assessment and determination of tax.

If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the treasurer from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, types of accommodations and services, number of employees, or other factors. Written notice of such assessments shall be given to the person liable for the collection and payment of the tax. Such assessment shall finally and irrevocably fix and determine the tax unless the person against whom it is assessed, within 90 days after the giving of notice of such assessment, shall apply in writing to the city council for a hearing or unless the treasurer on his own motion shall reassess the same. After such hearing, the city council shall give written notice of its determination to the person against whom the tax is assessed and such determination shall be final.

(Prior Code, § 26-72; Code 1993, § 10-513)

Sec. 74-126. - Refunds.

- (a) *Procedure.* The treasurer shall refund or credit any tax erroneously, illegally or unconstitutionally collected if written application to the treasurer for such refund shall be made within two years from the date of payment thereof. For like causes, and in the same period, a refund may be so made upon the initiative and the order of the treasurer. Whenever a refund is made, the reasons therefor shall be stated in writing. Such application may be made by the person upon whom such tax was imposed and who has actually paid the tax. Such application may also be made by the person who has collected and paid such tax to the treasurer, provided that the application is made within two years of the payment by the occupant to the operator, but no refund of money shall be made to the operator until he has repaid to the occupant the amount for which the application for refund is made. The treasurer, in lieu of any refund required to be made, may allow credit therefor on payments due from the applicant.
- (b) *Determination and hearing.* Upon application for a refund, the treasurer may receive evidence with respect thereto, and make such investigation as he deems necessary. After making a determination as to the refund, the treasurer shall give notice thereof to the applicant. Such determination shall be final unless the applicant, within 90 days after such notice, shall apply in writing to the city council for a hearing. After such hearing, the city council shall give written notice of its decision to the applicant.

(Prior Code, § 26-73; Code 1993, § 10-514)

Sec. 74-127. - Remedies exclusive.

The remedies provided in this article shall be exclusive remedies available to any person for the review of tax liability imposed by this article.

(Prior Code, § 26-75; Code 1993, § 10-515)

Sec. 74-128. - Additional powers of the treasurer.

- (a) In addition to all other powers granted to the treasurer, he is hereby authorized and empowered:
- (1) To make, adopt and amend rules and regulations appropriate to the carrying out of this article for the purposes thereof;
 - (2) To extend for cause shown the time for filing any return for a period not exceeding 60 days; and for cause shown to waive, remit, or reduce penalties or interest;
 - (3) To delegate his functions hereunder to an assistant or other employee or employees of the city;
 - (4) To assess, reassess, determine, revise and readjust the taxes imposed by this article; and
 - (5) To prescribe methods for determining the taxable and nontaxable rents.
- (b) The treasurer or his designated representative shall have the power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of his powers and duties under this article. The treasurer shall have the power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this article and to examine them in relation thereto.

(Prior Code, §§ 26-76, 26-77; Code 1993, § 10-516)

Sec. 74-129. - Certificates of registration.

Every operator shall file with the treasurer a certificate of registration in a form prescribed by said treasurer within ten days after the effective date of the ordinance from which this article is derived, or in the case of operator's commencing business or opening new hotels after such effective date, within three days after such commencement or opening. The treasurer shall, within five days after such registration, issue, without charge, to each operator a certificate of authority empowering such operator to collect the tax from the occupant and duplicates thereof for each additional hotel. Each certificate or duplicate shall state the hotel to which it is applicable. Such certificate of authority shall be permanently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the treasurer upon the cessation of business at the hotel named, or upon its sale or transfer.

(Prior Code, § 26-78; Code 1993, § 10-517)

Sec. 74-130. - Use of funds.

All taxes collected pursuant to the provisions of this article shall be set aside and used exclusively for the purpose of encouraging, promoting and fostering the convention and tourism development of the city.

(Prior Code, § 26-81; Code 1993, § 10-518)

State Law reference— Similar provisions, 68 O.S. § 50010 et seq.

Sec. 74-131. - Confidentiality of records.

The confidential and privileged nature of the records and files concerning the administration of the hotel tax is legislatively recognized and declared, and to protect the same the provisions of 68 O.S. § 205 of the State Sales Tax Code, and each subsection thereof is hereby adopted by reference and made fully effective and applicable to administration of this article as if here set forth.

(Prior Code, § 26-82; Code 1993, § 10-519)

Sec. 74-132. - Fraudulent returns.

The willful failure or refusal of any taxpayer to make reports and remittances therein required or the making of any false and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this article shall be an offense, and upon conviction thereof the offending taxpayer shall be subject to a fine according to a schedule of fines, as shall be modified from time to time by the council, and made available for public viewing in the office of the clerk of court, or by imprisonment for not more than 30 days or by both such fine or imprisonment.

(Prior Code, § 26-83; Code 1993, § 10-520)

Sec. 74-133. - Amendments.

The people of the city, by their approval of this article at the election herein provided, hereby authorize the city council by ordinances duly enacted to make such administrative and technical changes or additions in the method and manner of administration and enforcing this article as may be necessary or proper for efficiency and fairness except that the rate of the tax herein provided shall not be changed without approval of the qualified electors of the city as provided by law.

(Prior Code, § 26-84; Code 1993, § 10-521)

Sec. 74-134. - Provisions cumulative.

The provisions hereof shall be cumulative, and in addition to any and all other taxing provisions of city ordinances.

(Prior Code, § 26-85; Code 1993, § 10-522)

Sec. 74-135. - Provisions severable.

The provisions hereof are hereby declared to be severable, and if any section, paragraph, sentence or clause of this article is for any reason held invalid or inoperative by any court of competent jurisdiction, such decision shall not affect any other section, paragraph, sentence or clause hereof.

(Prior Code, § 26-86; Code 1993, § 10-523)

Editor's note— This section is included in the Code at the direction of the city. It is not intended to replace or conflict with the severability clause pertaining to all code provisions in section 1-11.

Secs. 74-136—74-153. - Reserved.