

## ORDINANCE NO. 3434

AN ORDINANCE RELATED TO CITY OF STILLWATER HOTEL ROOM TAX; AMENDING CHAPTER 39 OF THE STILLWATER CITY CODE TITLED "TAXATION," ARTICLE IV, "HOTEL ROOM TAX," SECTION 39-271, "DEFINITIONS," DELETING IN ITS ENTIRETY SECTION 39-276, "DISCOUNT" AND REPLACING WITH SECTION 39-276 "EXEMPTIONS"; AMENDING SECTION 39-278, "RETURNS"; SECTION 39-287 "ADMINISTRATION" AND SECTION 39-289 "RECORDS CONFIDENTIAL"; PROVIDING FOR SEVERABILITY

(AMENDMENTS HIGHLIGHTED BY STRIKETHROUGH AND UNDERLINING)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STILLWATER, OKLAHOMA, THAT:

*Section 1. That the Stillwater City Code, Chapter 39, titled "Taxation", Article IV, titled "Hotel Room Tax" be and the same is hereby now amended in part to read as follows:*

### **Sec. 39-271. - 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:

*Director* means the director of finance of the city.

*Hotel* means any building or buildings, structures, trailer, or other facility in which the public may, for consideration, obtain sleeping accommodations in which ~~five~~ one or more rooms are used for the accommodation of transient guests whether such rooms are in one or several structures. The term shall include hotels, apartment hotels, motels, tourist homes, houses or courts, lodging\_houses, inns, rooming\_houses, trailer houses, trailer motels, apartments and sleeping rooms ~~not occupied by "permanent residents,"~~ and all other facilities where rooms or sleeping accommodations or space are furnished for a consideration. The term shall not include hospitals, sanitariums, nursing homes, or dormitories at Oklahoma State University or other educational or charitable institutions.

*Occupancy* means the use or possession, or the right to the use or possession, of any room or rooms 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 or entity operating or managing a hotel in this city, including but not limited to the owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.

*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 or rooms 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 not capable of being occupied for lodging purposes 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; billiards, 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.

#### **Sec. 39-272. - Use of funds.**

Funds collected pursuant to the provisions of this article shall be set aside and used exclusively for the purpose of encouraging, promoting and fostering conventions, conferences, and tourism development in the city, and shall be allocated as follows:

- (1) 75 percent of the net proceeds shall be used for the promotion and solicitation of visitor attractions, events, tourism, conferences, conventions and meetings, and to provide services to visitors; and
- (2) 25 percent of the net proceeds shall be used for the planning, promotion, and projects of the city centennial observance. On July 1, 1990, that portion of annual revenues theretofore allocated to the centennial observance shall be applied to the visitors' and special events' promotion fund.

#### **Sec. 39-273. - Tax levied.**

There is hereby levied an excise tax of four percent of the gross rental receipts due from or paid by any transient guests of hotels located within the city, except that the tax shall not be assessed where the rent is less than \$5.00 per day.

#### **Sec. 39-274. - Tax to be designated.**

The operator shall separately designate, charge, and show all taxes on all bills, statements, receipts, or any other evidence of charges or payment of rent for occupancy issued or delivered by the operator.

#### **Sec. 39-275. - Operator responsible for collection.**

The operator shall be responsible for the collection of the tax from the occupant and shall be liable to the city for the tax.

**Sec. 39-276. – Discount.**

~~In order to remunerate an operator for keeping tax records, filing reports, and remitting the tax when due, a discount equal to that allowed by the state tax commission for the collection of sales tax shall be allowed upon all taxes paid prior to the time they become delinquent.~~

**Sec. 39-276. – Exemptions.**

The exemptions from state sales tax enumerated in 68 O.S. §§ 1350 et seq. “Sales Tax Code” are hereby adopted and incorporated herein by reference. To the extent any conflicts in connection with permitted exemptions should arise under this article and the Sales Tax Code, the Sales Tax code shall prevail.

**Sec. 39-277. - Records.**

It shall be the duty of every operator required to make a return and pay any tax under this article to keep and preserve suitable records of the gross daily rentals together with other pertinent records and documents which may be necessary to determine the amount of tax due hereunder and such other records as will substantiate and prove the accuracy of such returns. All such records shall remain in the city and be preserved for a period of three years, unless the director, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the director or by any of his duly authorized agents. The burden of proving that a sale was not a taxable sale shall be upon the operator who made the sale.

**Sec. 39-278. - Returns.**

- (a) ~~The tax levied hereunder shall be due and payable to the director or the Oklahoma Tax Commission pursuant to an agreement to collect municipal lodging taxes. The tax shall be due on the first day of each month, except as herein provided, by any person liable for the payment of any tax due under this article. For the purpose of ascertaining the amount of the tax payable under this article, it shall be the duty of all operators, on or before the 15 20th day of each month, to deliver to the director or the Oklahoma Tax Commission, upon forms prescribed and furnished by him, returns, under oath, showing the gross receipts or gross proceeds arising from rents received from occupancy of hotel rooms during the preceding calendar month. Such returns shall show such further information as the director or the Oklahoma Tax Commission may require to correctly compute and collect the tax herein levied. In addition to the information required on returns, the director or the Oklahoma Tax Commission may request and the operator shall furnish any information deemed necessary for a correct computation of the tax levied herein. Such operator shall compute and remit to the director or the Oklahoma Tax Commission the required tax due for the preceding calendar month. The remittance or remittances of the tax shall accompany the returns herein required. If not paid on or before the 15 20th of such month, the tax shall be delinquent after from such date. provided that no interest or penalty shall be charged on such return if filed on or before the 20th day of such month. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed.~~

- (b) The director 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 director and shall contain such information as he may deem necessary for the proper administration of this article. The director may require amended returns to be filed within 20 days after notice, which amended return shall contain the information specified in the notice.

**Sec. 39-279. - Payment of tax.**

At the time of filing a return of occupancy and of rents, each operator shall pay to the director the tax imposed by this article upon the rents included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this article.

**Sec. 39-280. - Bond required.**

- (a) Where the director 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 this state in such amount as the director may fix to secure the payment of any tax or penalties and interest due, or which may become due, from such operator.
- (b) In the event that the director determines that an operator is to file such bond, he shall give notice to such operator specifying the amount of bond required, which shall in no event exceed twice the amount of the sum in controversy.
- (c) The operator shall file such bond within five days after receiving such notice unless within such five days the operator shall request in writing a hearing before the city council at which time the necessity 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.
- (d) In lieu of such bond, securities approved by the director or cash in such amount as he may prescribe may be deposited with the director, 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.

**Sec. 39-281. - Assessment and determination of tax.**

- (a) 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 director 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.
- (b) 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 director upon his own initiative shall reassess the same.

- (c) 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.

**Sec. 39-282. - Refunds.**

- (a) *Procedure.* The director shall refund or credit any tax erroneously, illegally, or unconstitutionally collected if written application to the director for such refund shall be made within 90 days from the date of payment thereof. For like causes and in the same period, a refund may be made upon the initiative and the order of the director. 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 director, provided that the application is made within 90 days 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 director, 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 director may receive evidence with respect thereto, and make such investigation as he deems necessary. After making a determination as to the refund, the director 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.

**Sec. 39-283. - Notices.**

Any notice 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 addressed to the last known address of the operator.

**Sec. 39-284. - 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.

**Sec. 39-285. - Powers of director.**

In addition to all other powers granted to the director, he is hereby authorized and empowered:

- (1) To make, adopt, and amend rules and regulations appropriate to the collection of taxes pursuant to this article;
- (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 function 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;
- (5) To prescribe methods for determining the taxable and nontaxable rents.

**Sec. 39-286. - Registration certificates; certificates of authority.**

- (a) Every operator shall file with the director a registration certificate in a form prescribed by said director within ten days after the effective date of this article or, in the case of operators commencing business or opening new hotels after such effective date, within three days after such commencement or opening.
- (b) The director shall, within five days after the filing of such certificate, 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.
- (c) 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.
- (d) Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the director upon the cessation of business at the hotel, or upon its sale or transfer.

**Sec. 39-287. - Administration.**

One percent (1%) of the gross receipts derived from taxes collected pursuant to this article shall be retained by the office of the director for the purpose of administering and collecting the tax. Should the city enter into an agreement with the Oklahoma Tax Commission for the collection of municipal lodging tax, any collection assistance fee due under said agreement shall be deducted from the 1% retained by the city for the purpose of administering and collecting the tax. Should the city enter into an agreement with the Oklahoma Tax Commission for the collection of municipal lodging tax, to the extent that anything in this article conflicts with the procedures of administration and collection under the provisions of 68 O.S. § 201 et seq. "Uniform Tax Procedure", the Uniform Tax Procedure shall prevail.

**Sec. 39-288. – Interest**

If any tax levied by this article becomes delinquent, the person responsible and liable for such tax shall pay interest on such unpaid tax at the rate of 1½ percent per month on the unpaid balance from the date of delinquency until said unpaid balance is paid in full.

**Sec. 39-289. - Records confidential.**

The confidential and privileged nature of the records and files concerning the administration of the tax is legislatively recognized and declared; and to protect the same, the provisions of 68 O.S. § 205 "Uniform Tax Procedure" ~~of the State Sales Tax Code~~, and each subsection thereof,

are hereby adopted by reference and made fully effective and applicable to the administration of this article as if herein set forth.

**Sec. 39-290. - Fraudulent returns.**

The willful failure or refusal of any operator to make reports and remittances herein required, or the making of any false or fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this article shall be a Class A offense.

**Sec. 39-291. - Amendments.**

The people of Stillwater, by their approval of this article at the election herein provided, hereby authorized the city council, by ordinance duly enacted, to make such administrative and technical changes or additions in the method and manner of administering 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 voters of the city as provided by law.

PASSED, APPROVED, AND ADOPTED THIS \_\_\_\_ DAY OF APRIL 2019.

\_\_\_\_\_  
WILLIAM H. JOYCE, MAYOR

(SEAL)  
ATTEST:

\_\_\_\_\_  
ELIZABETH CHRZ, CITY CLERK

APPROVED AS TO FORM AND LEGALITY THIS \_\_\_\_ DAY OF APRIL 2019.

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JOHN E. DORMAN, CITY ATTORNEY

First Reading: 4-15-2019  
Second Reading: 4-22-2019