

**STATE OF GEORGIA
EFFINGHAM COUNTY**

**AN ORDINANCE TO IMPOSE AN EXCISE TAX ON ROOMS, LODGINGS AND ACCOMMODATIONS,
AND FOR OTHER PURPOSES**

WHEREAS, Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated authorizes the Board of Commissioners to levy certain excise taxes on rooms, lodgings, and accommodations for the purpose of making funds available for the purposes of promoting, attracting, stimulating, and developing conventions and tourism in Effingham County and for the provision of other local government services;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF EFFINGHAM COUNTY, in regular meeting assembled and pursuant to lawful authority thereof, as follows:

Sec. 1. - Definitions

The following words, terms and phrases shall, for the purposes of this article and except where the context clearly indicates a different meaning, be defined as follows:

Special District. The term special district shall have the same meaning as set forth in O.C.G.A. § 48-13-50.1, and shall include all the territory within Effingham County except territory located within the boundaries of any municipality which imposes an excise tax on charges to the public for rooms, lodgings, and accommodations under Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated.

County administrator. The duly appointed county administrator of the Board of Commissioners of Effingham County or his or her designee.

Due date. The twentieth day after the close of the monthly period for which the tax is to be computed.

Estimated tax liability. The operator's prospective tax liability based upon tax remittance in the prior fiscal year, as adjusted for change in tax rate or substantial change in circumstances due to damage to the hotel.

Folio. Primary documentation produced by a hotel that demonstrates interaction between the operator and the occupant, and which, at a minimum, reflects the name and address given by the occupant, the date(s) of occupancy, the amount of rent charged for each date together with the amounts of applicable excise tax(es), and the method(s) of payment.

Guest room. A room occupied, or intended, arranged, or designed for occupancy, by one (1) or more occupants for the purpose of living quarters or residential use.

Hotel. Any structure or any portion of a structure, including any lodging house, rooming house, dormitory, Turkish bath, bachelor hotel, studio hotel, motel, motor hotel, auto court, truck stop, tourist cabin, lodge, inn, time-share or other condominium, apartment community, public club, or private club, containing guest rooms and which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise. It does not include any hospital, asylum, sanitarium, orphanage, jail, prison, or other buildings in which human beings are housed and detained under legal restraint.

Innkeeper. Any person who is subject to taxation under this article for the furnishing for value to the public of any rooms, lodgings, or accommodations.

Lodging charges. The amount charged by any person or entity furnishing public accommodations in the special district for such public accommodations.

Monthly period. The calendar months of any year.

Occupancy. The use or possession, or the right to the use or possession of any guest room or apartment 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. Any person who, for a consideration, uses, possesses, or has the right to use or possess any guest room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Operator. Any person furnishing public accommodations; and who is subject to the taxation imposed for furnishing for value of such accommodations.

Permanent resident. Any occupant as of a given date who has or shall have occupied or has or shall have the right of occupancy of any guest room in a hotel for not less than ten (10) continuous days next preceding such date.

Person. Any individual, firm, partnership, joint adventure, association, social club, fraternal organization, joint stock company, corporation, cooperative, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, the plural as well as the singular number; excepting the United States, the State of Georgia and any instrumentality of either thereof upon which the county is without power to impose the tax.

Promoting tourism, conventions, and trade shows. Planning, conducting, or participating in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows.

Public accommodation. Any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by or required to pay a business or occupation tax to the county for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value and shall apply to the furnishing for value of any room, lodging, or accommodation

Rent. The consideration received for occupancy of a public accommodation 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 the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

Tax. The tax on occupants imposed by this article, as provided for by O.C.G.A. § 48-13-51(a)(3.2).

Sec. 2. – Levy of Excise Tax.

- (a) There shall be levied upon every person or legal entity furnishing any public accommodation in the special district an excise tax at the rate of five (5) per cent of the amount of the lodging charges collected unless an exemption is provided under section 4.
- (b) The excise tax so levied is also imposed upon every person or entity who is a hotel or motel guest and who receives a room, lodging, or accommodation. Each such guest subject to the tax levied under this section shall pay the tax to the person or entity providing such room, lodging, or accommodation. The tax shall be a debt of the person

obtaining the room, lodging, or accommodation to the person or entity providing such room, lodging, or accommodation until it is paid and shall be recoverable at law by the person or entity providing such room, lodging, or accommodation in the same manner as authorized for the recovery of other debts. The person or entity collecting the tax from the hotel or motel guest shall remit the tax to the governing authority imposing the tax, and the tax remitted shall be a credit against the tax imposed by division (a) of this subparagraph on the person or entity providing the room, lodging, or accommodation.

- (c) The lodging excise tax shall be levied at this rate and the resulting revenues shall be used pursuant to the provisions of O.C.G.A. § 48-13-51(a)(3).

Sec. 3. - Collection of tax by operator.

Every operator renting public accommodations in the special district shall collect a tax of five (5) per cent on the amount of lodging charges from the occupant unless an exemption is provided under section 4. The operator shall provide a receipt to the occupant, which receipt shall reflect both the amount of rent and the amounts of this and other tax(es) applicable. This tax shall be due from the occupant and shall be collected by the operator at the same time that the rent is collected.

Sec. 4. - Exemptions.

The tax imposed by this article shall not apply to:

- (a) Charges made for any rooms, lodgings, or accommodations provided to any persons who certify that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty;
- (b) The use of meeting rooms and other such facilities or any rooms, lodgings, or accommodations provided without charge;
- (c) Any rooms, lodgings, or accommodations furnished for a period of one or more days for use by Georgia state or local governmental officials or employees when traveling on official business. Notwithstanding the availability of any other means of identifying the person as a state or local government official or employee, whenever a person pays for any rooms, lodgings, or accommodations with a state or local government credit or debit card, such rooms, lodgings, or accommodations shall be deemed to have been furnished for use by a Georgia state or local government official or employee traveling on official business for purposes of the exemption provided by this paragraph. For purpose of the exemption provided under this paragraph, a local government official or employee shall include officials or employees of counties, municipalities, consolidated governments, or county or independent school districts; or
- (d) Charges made for continuous use of any rooms, lodgings, or accommodations after the first 30 days of continuous occupancy.
- (e) To employees of the United States Government and its instrumentalities for accommodations furnished for any period when the charges are paid exclusively by check or other negotiable instrument issued by the United States of America or any of its instrumentalities. Unless the charges are paid directly by the U.S. Government or one of its instrumentalities, such employees (including military personnel) are *not* exempt from this tax.

Sec. 5. - Registration of operator; form and contents; execution; certificate of authority.

Every person engaging or about to engage in business as an operator of a hotel in this county shall immediately register with the county administrator on a form provided by said official. Persons engaged in such business must so register not later than thirty (30) days after the date that the ordinance becomes effective. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of his place(s) of business and such other information which would facilitate the administration of the tax as prescribed by the county administrator.

The registration shall be signed by the owner if a natural person; in case of ownership by an association or partnership, by a member or partner; in case of ownership by a corporation, by an officer. The county administrator shall, after such registration, issue without charge a certificate of authority to each operator to collect the tax from the occupant. A separate registration shall be required for each place of business of an operator. Each certificate shall state the name and location of the business to which it is applicable.

Sec. 6. - Determination generally; returns; payments.

- (a) *Due date of taxes.* Each person furnishing public accommodations in the special district, on or before the twentieth day of each month, shall transmit returns and remit taxes due to the county administrator showing the gross charges taxable under this article during the preceding calendar month. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the county administrator. The tax shall become delinquent for each monthly period after the twentieth day of each succeeding month during which it remains unpaid. The United States Postal Service's postmark shall constitute evidence of the date of transmittal and remittance.
- (b) *Penalty and interest for failure to pay tax by due date.* An operator who fails to make any return or to pay the full amount of tax required by this article shall be assessed a penalty to be added to the tax in the amount of five (5) per cent or five dollars (\$5.00), whichever is greater, if the failure is for not more than thirty (30) days; and an additional five (5) per cent or five dollars (\$5.00), whichever is greater, for each additional thirty (30) days or fraction thereof in which such failure shall continue; provided, however, that the aggregate penalty for any single violation shall not exceed twenty-five (25) per cent or twenty-five dollars (\$25.00), whichever is greater. Delinquent amounts shall bear interest at the rate of one (1) per cent per month, or fraction thereof, until paid.
- (c) *Acceptance of delinquent return and remittance without imposing penalty and interest; authority; requirements.* If the failure to make any return or to pay the amount of tax by the due date results from providential cause shown to the satisfaction of the governing authority of the county by affidavit attached to the return, and remittance is made within ten (10) days of the due date, the return may be accepted exclusive of penalty and interest.
- (d) *Waiving of penalty and interest; authority.* O.C.G.A. § 48-2-41, relating to the authority to waive interest, and O.C.G.A. § 48-2-43, relating to the authority to waive penalty, shall apply; provided, however, that the governing authority shall stand in lieu of the Georgia Commissioner of Revenue, and the county shall stand in lieu of the State.
- (e) *Penalty for fraud.* In the case of a false or fraudulent return, or of failure to file a return where willful intent exists to defraud the county of any tax due, a penalty of fifty (50) per cent shall be assessed.
- (f) *Return; remittance; time of filing; operators required to file; contents.* On or before the twentieth day of the month succeeding each monthly period, a return for the preceding monthly period together with appropriate remittance shall be filed with the county administrator. The return shall report the gross rent, taxable rent, exempt rent, amount of tax collected or otherwise due for the period, and such other information as may be required by the county administrator. However, if the estimated tax liability for any monthly period shall exceed two thousand five hundred dollars (\$2,500.00) for an operator who, in the prior fiscal year remitted tax greater than two thousand five hundred dollars (\$2,500.00) in any three (3) consecutive months, such operator shall file an estimated return and remit not less than fifty (50) per cent of the estimated tax liability for the monthly period by the twentieth day of that same monthly period. The amount of tax so remitted shall be credited against the amount to be due with the regular return for the monthly period to be filed on the twentieth day of the succeeding month.
- (g) *Extension of time of filing; authority; requirements; remittance; penalty and interest.* The County Administrator may, for good cause, extend the time for making returns for not longer than thirty (30) days. No extension shall be valid unless granted in writing upon written application of the operator. Such grant may not be applicable for a longer period

than twelve (12) consecutive months. An operator granted an extension shall remit tax equaling not less than one hundred (100) per cent of the tax paid for the corresponding period of the preceding fiscal year; such remittance to be made on or before the date the tax would otherwise come due without the grant of extension. No penalty or interest shall be charged during the first ten (10) days of the extension period. Thereafter, interest shall be collected upon the unpaid balance at the rate specified by O.C.G.A. 48-2-40.

- (h) *Collection fee allowed operators.* Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be three (3) per cent of the amount due, but only if the amount due was not delinquent at the time of payment.

Sec. 7. - Deficiency determinations.

- (a) *Recomputation to tax; authority to make; basis of recomputation.* If the board of commissioners is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the county by any operator, the county administrator may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly periods.
- (b) *Penalty and interest for failure to pay tax.* Penalty and interest shall be assessed upon the amount of any determination, as provided by section six (6).
- (c) *Notice of determination; service of.* The county administrator shall give to the operator written notice of his determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the operator at his address as it appears in the records of the county. Service by mail is complete when delivered by certified mail with a receipt signed by addressee.
- (d) *Time within which notice of deficiency determination to be mailed.* Except in cases of failure to make a return or of fraud, every notice of deficiency determination shall be mailed within three (3) years after the twentieth day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three (3) years after the return is filed, whichever period should last expire.

Sec. 8. - Determination if no return made.

- (a) *Estimate of gross receipts.* If any operator fails to make a return, the county administrator shall make an estimate of the amount of the gross receipts of the operator, or as the case may be, of the amount of total rentals in this county which are subject to the tax. The estimate shall be made for the period or periods in respect to which the operator failed to make the return and shall be based upon any information which is or may come into the possession of the county administrator. Written notice shall be given in the manner prescribed in subsection 7(c).
- (b) *Penalty and interest for failure to pay tax.* Penalty and interest shall be assessed upon the amount of any determination, as provided by section 7.

Sec. 9. - Collection of tax by county.

- (a) *Action for delinquent tax; time for.* At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable, and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, the board of commissioners may bring an action in a court of competent jurisdiction in the name of the county to collect the amount delinquent together with penalty, interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.
- (b) *Operator selling or quitting business.* If any operator liable for any amount under this article sells out his or her business or quits the business, he or she shall make a final

return and payment within fifteen (15) days after the date of selling or quitting the business.

- (c) *Duty of successors or assignees of operator to withhold tax from purchase money.* If any operator liable for any amount under this article sells out his business or quits the business, his successors or assigns shall withhold a sufficient amount from the purchase price to cover the amount of the taxes, interest, and penalties due under this article and unpaid until the former owner produces either a receipt from the county administrator reflecting that such taxes, interest, and penalties have been paid or a certificate from the county administrator stating that no amount is due.
- (d) *Liability for failure to withhold.* If the purchaser of a business fails to withhold the purchase money as required, he or she shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, and the property being transferred shall in all cases be subject to the full amount of the tax lien arising from the delinquencies of the former owner.
- (e) *Credit for tax, penalty or interest paid more than one or erroneously or illegally collected.* Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected or received by the county, it may be offset by the governing authority. If the operator or person determines that he has overpaid or paid more than once, which fact has not been determined by the county administrator, such person shall have three (3) years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The claim shall be audited. If the claim is approved by the governing authority, the excess amount paid to the county may be credited on any amounts then due and payable from the person by whom it was paid.

Sec. 10. - Administration of ordinance; recordkeeping.

- (a) *Authority of county administrator.* The county administrator shall administer and enforce the provisions of this article for the collection of the tax.
- (b) *Records required from operators, etc; form.* Every operator renting public accommodations in the special district shall preserve, for a minimum of three (3) years, all folios, receipts, certificates of exemption and such other documents as the county administrator may prescribe, and in such form as he may require. Said records shall at all times be available for examination within the county during the county's regular business hours.
- (c) *Application for sales tax audit reports.* Each year, in the month of January, the county administrator shall request in writing from the Georgia Commissioner of Revenue any reports of sales tax audits conducted of hotels in the county during the preceding calendar year.
- (d) *Examination of records; audits.* The county administrator or any person authorized in writing by him may examine the books, papers, records, financial reports, equipment and other facilities of any operator renting public accommodations and any operator liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- (e) *Authority to require reports; contents.* In administration of the provisions of this article, the county administrator may require the filing of reports by any person or class of persons having in their possession or custody information relating to the rental of public accommodations which are subject to the tax. The reports shall be filed with the county administrator when required by said official, and shall set forth the rental charged for each occupancy, the date(s) of occupancy, the basis for exemption, or such other information as the county administrator may prescribe.

Sec. 11. - Violations.

- (a) In addition to the penalty of being liable for and paying the tax himself or herself, any person who fails, neglects, or refuses to collect the tax provided in this article, either by himself or herself or through his or her agents or employees, may be punished for violation of O.C.G.A. § 48-13-59 and, upon conviction thereof, shall be punished by a fine of not more than \$100.00 or imprisonment in the county jail for not more than three months, or both.
- (b) It shall be unlawful for any innkeeper to fail to make a return and pay the taxes due under this article. Offenders may be prosecuted for violations of O.C.G.A. § 48-13-58.1.
- (c) It shall be unlawful for any innkeeper required by this article to make, render, sign, or verify any return to make a false or fraudulent return with intent to evade the taxes levied by this article. Any person who violates this subsection may be prosecuted for violation of O.C.G.A. § 48-13-60 and, if found guilty, shall be punished by a fine of not less than \$100.00 nor more than \$300.00 or confinement in the county jail for not less than 30 days nor more than three months, or both.
- (d) It shall be unlawful for any innkeeper subject to this article to fail or refuse to furnish any return required to be made by this article or to fail or refuse to furnish a supplemental return or other data required by the board of commissioners. Any person who violates this subsection shall be guilty of a misdemeanor and may be prosecuted for violation of O.C.G.A. § 48-13-61.
- (e) It shall be unlawful for any innkeeper to fail to keep records or open the records for inspection as required by law. Any person who violates this subsection shall be guilty of a misdemeanor and may be prosecuted for violation of O.C.G.A. § 48-13-62.
- (f) Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by such person, and shall be punished accordingly.
- (g) Any person who violates any other provision of this article may be prosecuted and sentenced in the manner to the extent authorized by Section 1-19 of this Code.

Sec. 12. – Use of Tax Proceeds.

As required by O.C.G.A. § 48-13-51(a)(3), the county shall expend two-fifths of the tax collected for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector non-profit organization as defined by O.C.G.A. § 48-13-50.2(3).

Sec. 13. - Effective date.

This article and the tax levied hereby shall become effective on July 1, 2013, or upon the first day of the second month following the adoption of this ordinance, whichever occurs later.


Wendall Kessler, Chairman

First Reading: ⁴⁻~~6-18~~-2013

Second Reading: 6-18-2013

Attest:

Stephanie Johnson, Interim County Clerk