

CHAPTER 39

TRANSIENT LODGING TAX

ADMINISTRATION

39.000 Purpose. The purpose of this chapter is to institute a transient lodging tax in Benton County to fund tourism-related facilities and tourism promotion activities. [Ord. 2019-0294]

39.001 Where Tax is Imposed. The tax imposed in this chapter shall apply to all transient lodging located within Benton County, including within the city limits of incorporated cities in Benton County. [Ord. 2019-0294]

39.002 Use of Transient Lodging Tax Funds. The County shall distribute the revenue received from the transient lodging tax, minus any cost to the County in administering this chapter, as follows:

- (1) No less than seventy percent (70%) of all tax revenue received from lodging tax collectors shall be used to fund tourism promotion and tourism-related facilities.
- (2) The balance remaining shall be disbursed to the Benton County general fund to be used for county services. [Ord. 2019-0294]

39.003 Collector Records.

- (1) Every lodging tax collector shall keep records of each transaction involving rent and/or collection of transient lodging tax. All records shall be retained for no less than three (3) years and six (6) months.
- (2) The Chief Financial Officer or designee may examine all records of a lodging tax collector relating to receipt of rent and transient lodging tax and remittance of the tax during normal business hours and may obtain copies of the records to audit returns. [Ord. 2019-0294]

39.004 Authority of Chief Financial Officer. The Chief Financial Officer shall have the power to enforce this chapter, conduct audits, and to adopt rules, regulations, and forms consistent with this chapter. Upon adoption, rules and regulations of general application shall be mailed, or otherwise provided, to all registered lodging tax collectors. [Ord. 2019-0294]

DEFINITIONS

39.100 Definitions. As used in BCC ch. 39:

- (1) **“Board”** means the Benton County Board of Commissioners.

(2) **“Certificate of Tax Registration”** means the authorizing document issued by the Chief Financial Officer to a provider or intermediary which signifies they are registered as a lodging tax collector in Benton County.

(3) **“County”** means Benton County.

(4) **“Intermediary”** means a person, other than a provider, who facilitates the retail sale of transient lodging and:

(a) Charges for the occupancy of the transient lodging; or

(b) Collects the rent from the occupant; or

(c) Receives a fee or commission and requires the provider to use an application programming interface, or an otherwise specified third-party entity, to collect the rent.

(5) **“Lodging Tax Collector”** means a provider or intermediary who has registered with the Chief Financial Officer and has received a Certificate of Tax Registration.

(6) **“Occupancy”** means the right to the use or possession of any space in transient lodging for dwelling, lodging, or sleeping purposes for up to 30 days.

(7) **“Occupant”** means any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day an occupant checks out of the lodging shall not be included in determining the 30-day period, if the occupant is not charged rent for that day by the lodging tax collector. Any such individual so occupying space in a lodging shall be deemed to be an occupant until the period of 30 days has expired, unless there is an agreement in writing between the lodging tax collector and the occupant providing for a longer period of occupancy. In determining whether a person is an occupant, uninterrupted periods of time extending both prior and subsequent to the effective date hereof may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days of such month, shall not be deemed an occupant.

(8) **“Person”** means any individual, firm, partnership, joint venture, limited liability company, corporation, limited liability partnership, association, host, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(9) **“Provider”** means a person who furnishes transient lodging for occupancy to the general public for compensation.

(10) **“Rent”** means the consideration paid or payable by an occupant for the occupancy of space in transient lodging valued in money, goods, labor, credits, property, or other consideration. If a separate fee is charged for services, goods, or commodities, and the fee is optional, that fee is not included in rent.

(11) **“Chief Financial Officer”** means the individual or department appointed by the Board to collect and administer the tax on behalf of the County.

(12) **“Tax Return Form”** or **“Return”** means the form authorized by the Chief Financial Officer as the official form to be submitted by occupants in accordance with this chapter.

(13) **“Tourism Promotion”** means:

- (a) Advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists; or
- (b) Conducting strategic planning and research necessary to stimulate future tourism development; or
- (c) Operating tourism promotion agencies; or
- (d) Marketing special events and festivals designed to attract tourists.

(14) **“Tourism-Related Facilities”** means:

- (a) A conference center, convention center, or visitor information center; or
- (b) Other improved real property that has a useful life of ten (10) or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.

(15) **“Transient Lodging”** or **“Transient Lodging Facilities”** means:

- (a) Hotel, motel, or inn dwelling units that are used for occupancy by the general public; or
- (b) Spaces used for overnight parking of recreational vehicles, space in a mobile home or trailer park or placement of tents during periods of occupancy by the general public; or
- (c) Houses, duplexes, multiplexes, cabins, condominiums, apartment units, public or private dormitory, fraternity, sorority, public or private club, houseboats, trailers, or other dwelling units, or portions of any of these dwelling units that are used for occupancy by the general public.

(16) **“TLT”** or **“Transient Lodging Tax”** or **“tax”** means the Benton County Transient Lodging Tax authorized herein. [Ord. 2019-0294]

TAX AND COLLECTION

39.200 Tax Rate.

(1) Each lodging tax collector shall pay a TLT in the amount of three percent (3%) of the rent. The occupant shall pay the TLT with the rent to the lodging tax collector. The Chief Financial Officer shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the lodging tax collector to the Chief Financial Officer with each installment unless the lodging tax collector pays the entire amount with the first payment.

(2) For rent collected on portions of a dollar, the first one-third of tax shall be collected on 25 cents through 49 cents, inclusive; the second one-third of tax shall be collected on 50 cents through 74 cents, inclusive; and the third one-third of tax shall be collected on 75 cents to \$1.00. [Ord. 2019-0294]

39.201 Lodging Tax Collector Expense Withholding. Every lodging tax collector liable for collection and remittance of the tax imposed by this chapter may withhold five percent (5%) of all collected TLT revenues to cover the lodging tax collector's expense in collection and remittance of the tax. [Ord. 2019-0294]

39.202 Invoice or Receipts Must List Rate. Bills, receipts, or invoices provided to occupants shall specifically list the TLT and must accurately state the amount of the tax. All amounts listed as TLT on invoices, bills, or receipts must be reported as TLT and, after collection, must be turned over to the County, less the five percent (5%) allotment for lodging tax collector's expense. [Ord. 2019-0294]

39.203 Collection of Tax by Lodging Tax Collector. All lodging tax collectors not otherwise exempted under the terms of this chapter shall collect a tax from any occupants of transient lodging facilities located in Benton County. The tax collected or accrued by the lodging tax collector constitutes a debt owing by the lodging tax collector to the County. [Ord. 2019-0294]

39.204 Deferral of Tax Until Rent is Paid. In all cases of credit or deferred payment of rent, the payment of tax to the lodging tax collector may be deferred until the rent is paid, and the lodging tax collector shall not be liable for the tax until credits are paid or deferred payments are made. [Ord. 2019-0294]

39.205 Remittance; Tax Return Required.

(1) On or before the last day of the month following each calendar quarter, lodging tax collectors shall submit a completed tax return form to the Chief Financial Officer accompanied by remittance of all tax collected for that quarter, less an administration fee in accordance with BCC 39.201. Returns shall show the gross Rents collected, taxable Rents, the total amount of TLT collected, and the amount of the administrative fee retained. Returns shall also show the exempted and excluded rents and the basis for exemptions and exclusions.

(2) The initial return may be completed for less than the three months preceding the due date; thereafter, however, returns shall be made for the applicable quarterly period. [Ord. 2019-0294]

39.206 Due Date; Date of Delivery; Extensions.

(1) All taxes collected by a lodging tax collector under this chapter are payable to the Chief Financial Officer on a quarterly basis and shall be due on the last day of the month following the calendar quarter.

(2) Returns and remittances may be submitted in person or by mail. If the return and remittance is mailed, the postmark shall be considered the date of delivery.

(3) The Chief Financial Officer may extend the time for making any return or remittance of the tax by up to 30 days. No further extension shall be granted, except as authorized by the Board. Any lodging tax collector to whom an extension is granted shall pay interest at the rate of 1 percent per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this Chapter. [Ord. 2019-0294]

39.207 Fraud; Refusal to Collect; Evasion. If any lodging tax collector, provider or intermediary fails to collect, report, or remit the tax as required, submits a fraudulent return, or otherwise violates or attempts to violate this chapter, the Chief Financial Officer shall estimate the tax due, and calculate the amount owing for tax remittance, interest and penalties and provide notice to the lodging tax collector, provider or intermediary of the assessment. The determination and notice shall be made and mailed within three (3) years of the discovery by the Chief Financial Officer of the violation. The determination is due and payable upon receipt of notice and shall become final ten (10) business days after the date notice was delivered if no petition for redetermination is filed. [Ord. 2019-0294]

39.208 Lodging Tax Collector Delay.

(1) If the Chief Financial Officer believes that the collection of any tax or any amount of tax required to be collected and paid to the County will be jeopardized by delay, or if any determination will be jeopardized by delay, she or he shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination.

(2) The amount so determined, as provided in this Chapter, shall be immediately due and payable; and the lodging tax collector shall immediately pay same determination to the Chief Financial Officer after service of notice thereof. Provided, however, the lodging tax collector may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within 10 days from the date of service of notice by the Chief Financial Officer. [Ord. 2019-0294]

39.209 Security for Collection of Tax. The Chief Financial Officer, whenever she or he deems it necessary to insure compliance herewith, may require any lodging tax collector subject thereto to deposit with her or him such security in the form of cash, bond, or other security as the Chief

Financial Officer may determine. The amount of the security shall be fixed by the Chief Financial Officer, but shall not be greater than twice the lodging tax collector's estimated average quarterly liability for the period for which she or he files returns, determined in such manner as the Chief Financial Officer deems proper, or \$5,000, whichever amount is the lesser. The amount of the security may be increased or decreased by the Chief Financial Officer, subject to the limitations provided in this Chapter. [Ord. 2019-0294]

REGISTRATION AND CERTIFICATE OF TAX REGISTRATION

39.300 Registration of Lodging Tax Collector. Every person engaging in, or about to engage in, business as an lodging tax collector, provider or intermediary of transient lodging located in Benton County shall provide a completed registration form to the Chief Financial Officer within fifteen (15) calendar days after commencing business. The registration form shall require the lodging tax collector, provider or intermediary to provide the name of the business, any separate business address, the address of the transient lodging facility, and other information as the Chief Financial Officer may require to implement this chapter. The registration form shall be signed by the provider or intermediary. [Ord. 2019-0294]

39.301 Certificate of Tax Registration. The Chief Financial Officer shall, within ten (10) days after registration, issue without charge a Certificate of Tax Registration to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Chief Financial Officer when the business is sold or transferred or when the transient lodging facility ceases to operate at the location specified in the registration form. [Ord. 2019-0294]

39.302 Certificate of Tax Registration Requirements. Each Certificate of Tax Registration shall be prominently displayed at the transient lodging facility so as to be seen and readily noticeable by all occupants and persons seeking occupancy. The certificate shall include the following:

- (1) The name of the lodging tax collector;
- (2) The address of the transient lodging facility;
- (3) The date upon which the certificate was issued;
- (4) The certificate number as assigned by the Chief Financial Officer; and
- (5) "This Certificate of Tax Registration signifies that the person named on the face hereof has fulfilled the requirements of the transient room tax regulations of chapter 39 of the Benton County Code, by registration with the Benton County Chief Financial Officer for the purpose of collection from occupants the lodging tax imposed by said county and remitting said tax to the Benton County Tax Collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a lodging facility, or other nonexempt dwelling unit, without strictly complying with all local applicable

laws, including, but not limited to, those requiring a permit from any board, commission, department, or office of the county. This certificate does not constitute a permit." [Ord. 2019-0294]

EXEMPTIONS

39.400 Dwellings Exempt from Tax. No tax shall be imposed upon:

- (1) A dwelling unit in a hospital, health care facility, long-term care facility or any other residential facility that is licensed, registered or certified by the Oregon Department of Human Services or the Oregon Health Authority;
- (2) A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;
- (3) A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;
- (4) A dwelling unit at a nonprofit youth or church camp, nonprofit conference center, or other nonprofit facility. A non-profit lodging facility must be owned by an Internal Revenue Code 501(c) exempt organization and not be operated for a profit; or
- (5) A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:
 - (a) All dwelling units occupied are within the same facility; and
 - (b) The person paying consideration for the transient lodging is the same person throughout the consecutive period. [Ord. 2019-0294]

FINANCIAL PENALTIES AND INTEREST

39.500 Penalties Imposed for Failure to File.

- (1) The lodging tax is delinquent on the first working day of the month following each quarterly payment due date.
- (2) Any lodging tax collector who has not been granted an extension of time for remittance of tax due, and who fails to remit any tax imposed by this Chapter prior to delinquency, shall pay a penalty of 10 percent of the amount of the tax due in addition to the amount of the tax.
- (3) Any lodging tax collector who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of 15 percent of the amount of the tax due plus the amount of the tax and the 10 percent penalty first imposed.

(4) If the Chief Financial Officer determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto, in addition to the penalties stated in subsections (2) and (3) of this section. [Ord. 2019-0294]

39.501 Interest to be Paid for Late Remittance. In addition to the penalties imposed, any lodging tax collector who fails to remit any tax imposed by this Chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof without pro-ration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid. [Ord. 2019-0294]

39.502 Penalties and Interest to Accrue; Appeal to Board.

(1) Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid and remitted to Chief Financial Officer.

(2) Any lodging tax collector or provider who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated; provided, however, the lodging tax collector may petition the Board for waiver and refund of the penalty, or any portion thereof, and the Board may, if a good and sufficient reason is shown, waive and direct a refund of the penalty, or any portion thereof. [Ord. 2019-0294]

DEFICIENCIES, DETERMINATIONS AND REFUNDS

39.600 Deficiency Determination.

(1) If the Chief Financial Officer determines the returns are incorrect, the amount required may be computed and determined upon the basis of the facts contained in the return or returns or upon the basis of any information in the possession of the Chief Financial Officer. One or more deficiency determinations may be made of the amount due for one, or more periods, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in BCC 39.600-.602.

(2) In reviewing and adjusting returns, the Chief Financial Officer shall offset any amount received in excess of the remittances due against any shortages in remittances. The interest on under payments shall be computed in the manner set forth in BCC 39.600-.602.

(3) Except in the case of fraud or intent to evade the TLT, notice of deficiency determinations shall be issued within three (3) years of the period for which the deficiency determination is made.

(4) The time to remit deficient payment amounts under this section shall be extended if the Chief Financial Officer timely requests a redetermination. [Ord. 2019-0294]

39.601 Redeterminations.

- (1) Any person affected by a determination made under this chapter may file a petition for redetermination with the Chief Financial Officer within ten (10) business days of service of notice of the tax deficiency. A determination becomes final if a petition for redetermination is not timely filed.
- (2) If a petition for redetermination is filed within the allowable period, the Chief Financial Officer shall reconsider the determination and grant an oral hearing if requested. The oral hearing shall be set not less than 20 days, nor more than 50 days from the date the petition was received by the Chief Financial Officer.
- (3) After considering the petition and all available information, the Chief Financial Officer shall issue a redetermination decision and mail the decision to the petitioner. During the redetermination process, the Chief Financial Officer may agree to a compromise of the amount due if there is reasonable evidence to support a compromise.
- (4) The decision of the Chief Financial Officer on redetermination becomes final and payment is due no later than ten (10) business days after the decision is mailed unless the petitioner files an appeal to the Board within that time. The appeal shall also be filed with the Chief Financial Officer. The Board shall conduct a record review of the initial appeal and shall not hold a hearing on the final appeal. The Board's decision shall be final when reduced to writing and mailed to the petitioner, and all amounts due must be paid within ten (10) business days of mailing of the Board's decision. [Ord. 2019-0294]

39.602. Refunds.

- (1) A lodging tax collector may file a claim for refund by filing a claim in writing within three (3) years of payment providing the facts relating to the claim for refund. If the Chief Financial Officer determines that the tax was collected and remitted to the County and the occupant was not required to pay the tax or overpaid, the County shall issue a refund.
- (2) The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund. [Ord. 2019-0294]

ENFORCEMENT

39.700 Legal Right to Collect.

- (1) The County may bring legal action to collect on any amounts owed to the County under this Chapter within three (3) years after remittance is due to the County or within three (3) years after any determination becomes final.
- (2) The County is entitled to collect reasonable attorneys' fee in any legal action brought to collect on amount owed to the County under this Chapter.

(3) The County may seek a judgment lien, or any other lien authorized by law, against any real property owned by the lodging tax collector or provider as to any delinquent remittances owed by the lodging tax collector or provider. [Ord. 2019-0294]

39.701 Lien.

(1) Any tax collected by the lodging tax collector, provider or intermediary but not remitted to the Chief Financial Lodging tax collector in the time required by this chapter, together with the interest and penalties herein provided and the filing fees paid to the Clerk of Benton County and advertising costs which may be incurred when same becomes delinquent as set forth in this chapter, shall constitute a lien on the transient lodging real property. The Chief Financial Officer may record a lien in the county lien record against the transient lodging property and any real property owned by the lodging tax collector, provider or intermediary as to any delinquent remittance by the lodging tax collector, provider or intermediary. The lien is in addition to any other process to secure payment allowed by law.

(2) This lien shall have priority over all other liens and encumbrances of any character. The lien may be foreclosed on and the property sold as may be necessary to discharge the lien in the manner specified in ORS 223.505 through 223.595.

(3) Any lien for taxes shall, upon the payment of all taxes, penalties and interest thereon, be released by the Chief Financial Officer, and the lodging tax collector, provider, intermediary or person making such payment shall receive a receipt stating the full amount of taxes, penalties and interest thereon have been paid and that the lien is thereby released. [Ord. 2019-0294]

39.702 Providers and Intermediaries Jointly Liable for Tax. A lodging tax collector, provider and an intermediary may be held jointly and severally liable for the tax, including any and all penalties and interest provided for in this chapter. [Ord. 2019-0294]

39.703 Fines. Violation of the provisions of this chapter may also be punished in accordance with the provisions of BCC chapter 31. [Ord. 2019-0294]