

Chapter 4.12

LODGERS' TAX¹

4.12.010: SHORT TITLE:

This chapter shall be known as and may be cited as *THE LODGERS' TAX ORDINANCE*. (Ord. 97-32 § 1, 1997: prior code § 19-48)

4.12.020: PURPOSE:

The purpose of this chapter is to impose a tax which will be borne by persons using commercial lodging accommodations, which tax will provide revenues for the purpose of advertising, publicizing and promoting tourist related facilities, tourist attractions, and acquisition, construction and maintenance of tourist attractions and recreational facilities, and for all other legally permissible purposes including those purposes. (Ord. 97-32 § 1, 1997: prior code § 19-48.1)

4.12.030: DEFINITIONS:

For the purposes of this chapter the following words, terms and phrases shall have the meanings respectively ascribed to them:

ACCOMMODATIONS: In addition to rooms, all facilities or amenities or both that are provided as a part of the taxable service of lodgings, and includes facilities or amenities or both that are an essential and integral part of the provision or use of lodgings whether or not advertised and billed separately from the lodgings. Accommodations includes facilities or amenities that are advertised and billed separately from the taxable service of lodgings, unless the separate advertising and the billing procedure is first approved in writing by the town administrator.

BOARD: The lodgers' occupancy tax advisory board established herein to make recommendations for advertising, publicizing and promoting tourist related attractions, facilities and events to the governing body, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body.

FINANCE DIRECTOR: The finance department director.

GROSS TAXABLE RENT: The total amount of rent paid for lodging, or other

accommodations, not including the state gross receipts.

INCREMENT: A specified unit of the total percent of occupancy tax imposed where the unit is derived by dividing the percent tax imposed into separate parts of one percent (1%) or portions of one percent (1%).

LODGING: The transaction of furnishing rooms or other accommodations by a vendor to a vendee who for a rent uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at a taxable premises.

LODGINGS: The rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

OCCUPANCY TAX: The tax on lodging authorized by the lodgers' tax act.

PERSON: A corporation, firm, other body corporate, partnership, association or individual, and includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity, but does not include the United States of America, the state of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government, or any political subdivision of the state.

RENT: The consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings and other accommodations subject to an occupancy tax authorized in the lodgers' tax act.

TAXABLE PREMISES: A hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, bed and breakfast, guesthouse, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises for lodging.

TOURIST: A person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.

TOURIST RELATED EVENTS: Events that are planned for, promoted to and attended by tourists.

TOURIST RELATED FACILITIES AND ATTRACTIONS: Facilities and attractions that are intended to be used by or visited by tourists.

TOURIST RELATED TRANSPORTATION SYSTEMS: Transportation systems that provide transportation for tourists to and from tourist related facilities, attractions and events.

TOWN ADMINISTRATOR: The town manager of Taos, or the town council of Taos, or other designated representatives of the town manager, as the case may be.

VENDEE: A natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

VENDOR: A person furnishing lodgings in the exercise of the taxable service of lodging.
(Ord. 97-32 § 1, 1997: prior code § 19-49)

4.12.040: IMPOSITION OF TAX:

There is imposed an occupancy tax of revenues of five percent (5%) of gross taxable rent for lodging within the municipality paid to vendors after the effective date hereof. (Ord. 02-14, 2002: Ord. 97-32 § 1, 1997: prior code § 19-50)

4.12.050: EXEMPTIONS:

The occupancy tax shall not apply to any portion of the gross taxable rent:

A. If a vendee:

1. Has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days, or
2. Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty (30) consecutive days;

B. If the rent paid by a vendee is less than two dollars (\$2.00) a day;

C. To lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;

D. To lodging accommodations at religious, charitable, educational or philanthropic institutions, including, without limitation, such accommodations at summer camps operated by such institutions;

E. To clinics, hospitals or other medical facilities;

- F. To privately owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill; or
- G. If the taxable premises does not have at least three (3) rooms or three (3) other units of accommodations for lodging. (Ord. 97-32 § 1, 1997: prior code § 19-51)

4.12.060: COLLECTION OF THE TAX:

- A. Every vendor providing lodgings shall collect the tax thereon on behalf of the town, and shall act as a trustee therefor.
- B. The tax shall be collected from the vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.
- C. Every vendor shall specify to the town, on a form provided by the town, whether the vendor is using a cash or accrual method of accounting in reporting and paying lodgers' taxes. (Ord. 00-13, 2000: Ord. 97-32 § 1, 1997: prior code § 19-52)

4.12.070: MONTHLY REPORTS:

Each vendor shall make a report by the twenty fifth day of each month on forms provided by the town cashier's office of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodgers' tax to the town and include sufficient information to enable the town to audit the report, and such report shall be verified on oath by the vendor. (Amended per letter from town 4-3-1998: Ord. 97-32 § 1, 1997: prior code § 19-53)

4.12.080: RECORDS:

- A. A vendor shall maintain adequate records of facilities subject to the occupancy tax and of proceeds received for the use thereof. Such records shall be maintained in the town, shall be open to the inspection of the town during reasonable hours and shall be retained

for three (3) years. The vendor shall provide such records to the town upon thirty (30) days' notice.

- B. Failure of the vendor to maintain adequate records or to allow inspection of said records as required under this section shall subject the vendor to penalties as provided in section 4.12.200 of this chapter. (Ord. 00-13, 2000: Ord. 97-32 § 1, 1997: prior code § 19-54)

4.12.081: SALE OR CLOSURE OF LODGING ESTABLISHMENT:

Upon a change of ownership of the lodging establishment or upon the closing of the lodging establishment, the vendor shall notify the town of Taos in writing stating the date of the change in ownership and the name and address of the new owners or the date that the lodging establishment will be closed. (Ord. 00-13, 2000)

4.12.090: FAILURE TO PAY TAX:

Every vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the town, whether due to his failure to collect the tax or otherwise. He shall be liable for the tax plus a civil penalty equal to the greater of ten percent (10%) of the amount not remitted or one hundred dollars (\$100.00). In addition to the penalty, for every month that the vendor fails to remit the amount due on lodgers' tax to the town, the town shall assess one percent (1%) per month interest on the unpaid amount. The town shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed to the vendor's local address. (Ord. 00-13, 2000: Ord. 97-32 § 1, 1997: prior code § 19-55)

4.12.100: FAILURE TO MAKE RETURN:

If any vendor neglects or refuses to make a return and pay the tax as required by this chapter, the lodgers' tax ordinance, the finance department shall make an estimate based upon an examination of the vendor's books and records, or upon any information in its possession, of the amount of the rent of the delinquent vendor for the period in respect to which he has failed to make a return, and upon the basis of said estimated amount shall compute and assess the tax payable by the delinquent vendor, adding to the sum thus arrived at a penalty equal to ten percent (10%) thereof but not less than ten dollars (\$10.00). Promptly thereafter the town shall give the delinquent vendor written notice of such estimated tax penalty and interest, which notice shall be served personally or by certified mail. (Ord. 97-32 § 1, 1997: prior code § 19-56)

4.12.110: COURT ACTION TO COLLECT DELINQUENCIES:

If the payments are not made by the vendor within fifteen (15) days of a notice of estimated tax given under section 4.12.090 or 4.12.100 of this chapter, the town clerk shall bring an action in law or equity in the district court for the collection of any amounts due, including, without limitation, penalties thereon, interest on the unpaid principal at a rate not exceeding one percent (1%) a month, the costs of collection and reasonable attorney fees incurred in connection therewith. (Ord. 97-32 § 1, 1997: prior code § 19-57)

4.12.120: REFUNDS AND CREDITS:

If any person believes he has made payment of any lodgers' tax in excess of that for which he was liable, he may claim a refund thereof by directing to the town finance director, not later than ninety (90) days from the date payment was made, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The town finance director may allow the claim in whole or in part or may deny it. (Ord. 97-32 § 1, 1997: prior code § 19-59)

4.12.130: USE OF LODGERS' TAX MONEY:

- A. At least one-half ($\frac{1}{2}$) of the proceeds from the first three percent (3%) of the tax and at least one-fourth ($\frac{1}{4}$) of the proceeds from the tax in excess of three percent (3%) shall be used for the purpose of advertising, publicizing and promoting the community's tourist related attractions, facilities and events.
- B. Not more than one percent (1%) of the proceeds shall be used for the purpose of providing public transportation within the town and adjacent tourist destination areas.
- C. The proceeds of the occupancy tax not used for the above stated purposes shall be used to defray costs as follows:
 - 1. Collecting and administering the tax;
 - 2. Audits;
 - 3. Establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in

real property for the site or grounds for convention facilities, tourist related facilities, tourist attractions or transportation systems of the municipality or the county in which the municipality is located;

4. Advertising, publicizing and promoting tourist related attractions, facilities and events of the municipality or county and tourist facilities or attractions within the area;
5. Providing police and fire protection and sanitation service for tourist related events, facilities and attractions located in the respective municipality or county;
6. Principal and interest of revenue bonds issued as authorized by section 3-38-23 or 3-38-24 New Mexico Statutes Annotated, 1978; or
7. Any combination of the foregoing purposes or transactions stated in this section; but for no other municipal or county purpose. (Ord. 00-18, 2000: Ord. 97-32 § 1, 1997: prior code § 19-60)

4.12.140: ADVISORY BOARD:

The governing body shall administer the lodgers' tax monies collected. The mayor shall appoint, with the consent of the council, an advisory board of five (5) residents of the municipality, two (2) of whom shall be owners or operators of lodgings industry subject to the tax within the municipality, two (2) of whom are owners or operators of industries within the municipality that primarily provide services or products to tourists and one member who is a resident of the municipality and represents the general public. The members of the board shall serve at the pleasure of the mayor. The board shall advise the governing body on expenditures of funds authorized under this chapter for advertising, publicizing and promoting tourist attractions and facilities in the municipality and surrounding areas. The recommendations for the expenditures of funds shall be submitted to the governing body by the board. The budget approved by the governing body shall be furnished to the advisory board. (Ord. 97-32 § 1, 1997: prior code § 19-61)

4.12.150: AUDITS:

- A. The town finance director shall select, for annual random audits, one or more vendors to verify the amount of gross rent subject to the occupancy tax and to ensure that the full amount of occupancy tax on the rent is collected from each vendor thus audited.
- B. The town finance director shall determine each year the number of vendors within the municipality.

- C. The audit(s) may be performed by the town finance director or by any other designee. A copy of the audit(s) shall be submitted to the town's advisory board for review. A copy of the audit(s) shall be filed annually, with the local government division of the department of finance and administration. (Ord. 97-32 § 1, 1997: prior code § 19-62)

4.12.160: OCCUPANCY TAX IS A LIEN:

- A. The occupancy tax imposed shall constitute a lien, in favor of the town, upon the personal and real property of the owner of the property providing lodgings within the jurisdiction of the town. The lien may be enforced as provided in sections 3-36-1 through 3-36-7, New Mexico Statutes Annotated (1978 as amended). Priority of the lien shall be determined from the date of filing. The town finance director shall furnish a certificate showing the amount of all liens against the vendor.
- B. Any occupancy tax due the town shall be paid from the proceeds of any sale, before payment is made, to a judgment creditor or any other person with a claim on the proceeds of the sale.
- C. Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the town finance director the amount of an occupancy tax due the town. (Ord. 97-32 § 1, 1997: prior code § 19-63)

4.12.170: CONTRACTING FOR SERVICES:

The governing body may contract for the management of programs and activities for advertising, publicizing and promoting tourist related attractions, facilities and events. The contractor shall be required to maintain the funds from the town in a separate account, not commingled with any other money, maintain complete and accurate financial records of each expenditure, and make such records available for inspection upon request by the town. Subcontractors shall be subject to the same terms and conditions. Lodgers' tax revenue may be spent for day to day operations, supplies, salaries, office rental, travel expenses and other administrative costs if incurred directly for the purpose of advertising, publicizing and promoting tourist related attractions, facilities and events. Quarterly reports of expenditures made for contracted services shall be made to the governing body and the advisory board. (Ord. 97-32 § 1, 1997: prior code § 19-64)

4.12.180: LOCAL GOVERNMENT DIVISION RULES:

A report shall be made quarterly to the local government division of the state department of finance and administration of expenditure of lodgers' tax. A copy shall be submitted to the advisory board. (Ord. 97-32 § 1, 1997: prior code § 19-65)

4.12.190: VENDOR'S BUSINESS REGISTRATION REQUIRED:

- A. No vendor shall engage in the business of providing lodging in the town who has not first obtained a business registration as provided in this section.
- B. Applicants for a vendor's business registration shall submit an application to the finance department stating:
1. The name of the "vendor", including identification of any "person", as defined in this chapter, who owns or operates or both owns and operates a place of lodging and the name or trade names under which the vendor proposes to do business and the post office address thereof;
 2. A description of the facilities, including the number of rooms and the usual schedule of rates therefor;
 3. A description of other facilities provided by vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car, stenography, tailor or others, and a statement identifying the license/registration issued, to whom issued, the authority issuing, and the period for which issued, if applicable, and the identification number provided by the taxation and revenue department of the state of New Mexico;
 4. The nature of the business practices of the vendor and to what extent, if any, his business is exempt from the lodgers' tax;
 5. State of New Mexico gross receipts tax number (CRS ID number); and
 6. Other information reasonably necessary to effect a determination of eligibility for such license.
- C. The finance department shall review applications for registration within ten (10) days of receipt thereof, and grant the registration in due course if the applicant is doing business subject to the lodgers' tax.

- D. An applicant who is dissatisfied with the decision of the finance department may appeal the decision to the town council by written notice to the town clerk of such appeal to be made within fifteen (15) days of the date of the decision of the finance department on the application. The matter shall be referred to the town council for hearing at a regular or special meeting in the usual course of business. The decision of the town council made thereon shall be expressed in writing and be communicated in the same manner as the decision of the finance department is transmitted. The action of the town council shall be final.
- E. If the town council finds for the applicant, the finance department shall issue the appropriate registration or other notice conforming to the decision made by the council. (Ord. 97-32 § 1, 1997: prior code § 19-76)

4.12.200: CRIMINAL PENALTIES:

Any person who violates the provisions of the lodgers' tax ordinance by failure to pay the tax, to remit the proceeds thereof to the town, to account properly for any lodging tax proceeds pertaining thereto, or to provide such records to the town as required in this chapter, shall be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed ninety (90) days, or both. (Ord. 00-13, 2000: Ord. 97-32 § 1, 1997: prior code § 19-58)

3-38-14. Definitions.

As used in the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978]:

- A. "gross taxable rent" means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes;
- B. "lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent uses, possesses or has the right to use or possess the rooms or other units of accommodations in or at a taxable premises;
- C. "lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings;
- D. "occupancy tax" means the tax on lodging authorized by the Lodgers' Tax Act;
- E. "person" means a corporation, firm, other body corporate, partnership, association or individual. "Person" includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" does not include the United States of America, the state of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government or any political subdivision of the state;
- F. "rent" means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodgers' Tax Act;
- G. "taxable premises" means a hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for lodging;
- H. "tourist" means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax;
- I. "tourist-related events" means events that are planned for, promoted to and attended by tourists;
- J. "tourist-related facilities and attractions" means facilities and attractions that are intended to be used by or visited by tourists;
- K. "tourist-related transportation systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities and attractions and tourist-related events;
- L. "vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and
- M. "vendor" means a person or his agent furnishing lodgings in the exercise of the taxable service of lodging.

History: 1953 Comp., § 14-37-15, enacted by Laws 1969, ch. 199, § 2; 1996, ch. 58, § 2; 2000, ch. 37, § 1.

