

**Section 225 Lodging Tax**

**225.01 Lodging Tax.** Pursuant to Minnesota Statutes § 469.190, there is imposed a tax of three (3) percent on the rent charged by the operator providing lodging to any person in the City of Silver Bay, Minnesota.

**Subd. 1 Purpose.** The tax imposed by this section shall be used in accordance with Minnesota Statutes § 469.190 as the same may be amended from time to time, to fund a local Convention or Tourism Bureau to market and promote the City of Silver Bay as a tourist and convention center and allow it to compete fairly with other areas of the North Shore of Lake Superior and northern Minnesota that already have a lodging tax. The Council may designate the local area Chamber of Commerce or other public interest organization as the convention and tourism bureau.

**Subd. 2 Definitions.** The following terms, phrases and words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and viz versa. The word “shall” is always mandatory and not merely directory.

(a) “City” means the City of Silver Bay, Minnesota.

(b) “lodging” means the furnishing for consideration lodging (staying overnight) at a hotel, motel, rooming, tourist court, resort, or other rental facility within the City, except where such lodging shall be for a continuous period of more than thirty (30) days to the same lodger.

(c) “Tax Administrator” means the City Administrator or other official or entity with which the City has designated or contracted to collect the tax on its behalf and for administrative services.

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(d) “operator” means a person who provides lodging to others or any officer, agent or employee of such person.

(e) “person” means a municipality, individual, corporation partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate, other legal entity, or any combination of individuals. Whenever the term “person” is used in any provision of this section, prescribing and imposing a penalty, the term as applied to any corporation, association or partnership, shall mean the officers or partners thereof as the case may be.

(f) “rent” means the total consideration valued in money charged for the lodging whether paid in money or otherwise, but shall not include any charges for services (such as valet service, etc.) rendered in connection with furnishing lodging rather than the room charge itself.

(g) “lodger” means a person obtaining lodging from the operator.

(h) “tax” means the tax imposed by this section.

**Subd. 3 Effective Date.** The tax shall be effective and commence on the 1st day of January, 2008.

**Subd. 4 Tax a Debt to the City.** The tax collected by the operator shall be a debt owned by the operator to the City and shall be extinguished only by payment to the City. In no case shall the tax imposed by this section upon an operator exceed the amount of the tax which the operator is authorized and required by this section to collect from the lodger.

**Subd. 5 Collections.** Each operator shall collect the tax imposed by this section at the time the rent is paid. The Tax collections shall be deemed to be held in trust by the operator for the City. The amount of the tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a receipt of payment from the

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operator.

### **Subd. 6 Exceptions and Exemptions.**

(a) Exceptions. No tax shall be imposed on rent for lodging paid by an officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty.

(b) Exemptions. An exemption shall be granted to any person as whose occupancy is beyond the City to tax. So exemption shall be granted except upon a claim therefore made at the time the rent is collected and such a claim shall be made in writing under penalty of perjury on forms provided by the City. All such claims shall be forwarded to the City when the returns for collection are submitted as required by this section.

**Subd. 7 Advertising No Tax.** It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than one cent shall be considered an additional one cent.

**Subd. 8 Payment and Returns.** The Taxes imposed by this section shall be paid to the Tax Administrator monthly, not later than twenty-five (25) days after the end of the month in which the taxes were collected. At the time of payment the operator shall submit a return upon such forms and containing such information as the City or its Tax Administrator may require. The return shall contain the following information:

- (a) The total amount of rent collected for the lodging during the period covered by the return.
- (b) The amount of the tax required to be collected and due for the period.
- (c) The signature of the person filing the return or that of his or her agent duly

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authorized in writing.

(d) The period covered by the return.

(e) The amount of the uncollectible rental charges subject to the tax.

**Subd. 9 Examination of Return, Adjustments, Notice and Demands.** The Tax Administrator shall, after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid. If the tax due is found to be greater than that paid, such excess shall be paid to the Tax Administrator within ten (10) days after receipt of a notice thereof given either personally or sent by certified mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax or, in the discretion of the Tax Administrator, may be withheld and applied to future taxes due. If the excess tax is withheld, the Tax Administrator shall notify the person who paid the tax that there is a credit allocated to the taxpayer's account.

**Subd. 10 Refunds.** Any person may apply for a refund of taxes for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one (1) year from the date of the return, whichever period is longer. The Tax Administrator shall examine the claim to determine the correctness of the claim and shall return any excess taxes paid.

If no excess is found, the Tax Administrator shall so inform the applicant. If the claim is denied in full or in part, the applicant may make a written application to the City Council for a hearing on the matter.

**Subd. 11 Failure to File a Return.** If any operator required by this section to file a return shall fail to do so within the time prescribed, or shall make, willfully or otherwise, an

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incorrect, false or fraudulent return, the operator shall, upon written notice and demand given in person or by certified mail, file such return or corrected return with five (5) days. If such person shall fail to file such return or corrected return, the Tax Administrator shall file a return for such person from such knowledge and information as the Tax Administrator can obtain, and assess a tax on the basis thereof, which tax, less any payments made on account of the tax for the taxable period covered by such return, shall be paid within five (5) days of personal service or mailed notice of demand for payment. Any such return or assessment made by the Tax Administrator shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

(a) If any portion of a tax imposed by this section, including penalties, is not paid within thirty (30) days after it is required to be paid, the City may institute such legal action or civil procedure as may be necessary to recover the amount due plus interest, penalties, attorney fees and the costs and disbursements of any action.

(b) Upon a showing of good cause, the Tax Administrator may grant an operator one thirty (30) day extension of time within which to file a return and make payment of taxes as required by this section provided that interest during the period of extension shall be added to the taxes due at the rate set by statute for judgments.

### **Subd. 12 Penalties.**

(a) If any tax imposed by this section is not paid within the time herein specified for payment, or any extension, there shall be added thereto a specific penalty equal to ten (10) percent of the amount remaining unpaid.

(b) In case of any failure to make and file a return within the time prescribed by this

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section, unless it is shown that such failure is not due to willful neglect, there shall be added to the tax in addition to the ten percent (10%) specific penalty provided in subdivision "a" above, ten percent (10%) if the failure is not for more than thirty (30) days with an additional five percent (5%) for each additional thirty (30) days or fraction thereof during which time such failure continues, not exceeding twenty-five percent (25%) in the aggregate. If the penalty as computed does not exceed Twenty-five dollars (\$25.00), a minimum penalty of Twenty-five dollars (\$25.00) shall be assessed. The amount so added to any tax shall be collected at the same time and the same manner and as a part of the tax unless the tax has been paid before discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

(c) If any person willfully fails to file any return or make any payment required by this section, or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat any such tax or the payment, there shall also be imposed as a penalty an amount equal to fifty percent (50%) of any tax found due for that period.

(d) The penalty imposed by this subdivision shall be collected as part of the tax and shall be in addition to any other penalties provided in this section.

(e) All payments received shall be credited first to penalties, next to interest, and then to the tax due.

(f) The amount of tax not timely paid, together with any penalty provided in this section, shall bear interest at the rate set by statute for judgments from the time such tax should have been paid. Any interest and penalty shall be added to the tax and collected as a part of the tax.

**Subd. 13 Liens.** In the event the tax and penalties provided for in this section remain

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unpaid, the total charges due may be made a lien on the lodging premises. All such charges that are delinquent on the first day of September each year that have been properly billed to the owner or occupant of the premises may, by order of the Council, be certified by the City Administrator to the County Auditor within the Auditor's time limits each year. The City Administrator, in certifying the charges to the County Auditor, shall specify the amount with the description of the premises and the name of the owner. The amount so certified shall be extended on the tax rolls against the premises in the same manner as other taxes and paid to and collected by the County Treasurer along with other taxes pursuant to Minnesota Statutes § 444.075 and 443.015.

**Subd. 14 Revocation or Suspension of License.** Whenever an operator fails to comply with any of the provisions of this section, the Council may, after a hearing, suspend or revoke any licenses (including but not limited to liquor licenses) issued to the operator by the City. Before such hearing, the operator shall be given ten (10) days written notice. The Notice of Hearing shall be published in the legal newspaper of the City not less than ten (10) days before the hearing.

**Subd. 15 Administration of the Tax.** The Tax Administrator shall administer and enforce the assessment and collection of the taxes and penalties imposed by this section. The Tax Administrator shall cause to be prepared blank forms for the returns and other documents required by this section and shall distribute the same to all operators within the City.

The failure of an operator to receive or secure such forms shall not relieve any person from the obligations required by this section.

**Subd. 16 Examine Records.** The Tax Administrator or other persons authorized by the Council may examine the books, papers and records of any operator in order to verify the accuracy of any return made, or if no return is made, to ascertain the tax as provided in this

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section. Every operator is directed and required to give the Tax Administrator or the duly authorized agent or employee the means, facilities and opportunity for such examination and investigation

**Subd. 17 Contract for Tax Administration.** As provided in Minnesota Statutes § 469.190, the Council may enter into an agreement with the Minnesota Commissioner of Taxation, or other appropriate entity, for the purpose of acting as Tax Administrator and providing for the administration and collection of taxes imposed by this section. The fees charged by any such Tax Administrator for administrative services and collecting the taxes imposed by this section shall not exceed five percent (5%) of the gross proceeds of the tax so imposed.

**Subd. 18 Violations.** In addition to any other penalties prescribed herein, any person who shall willfully fail to make a return required by this section, or who shall fail to pay the tax after written demand for payment, or who shall fail to remit the taxes collected or any penalty or interest imposed by this section after written demand for payment or who shall refuse to permit the Tax Administrator or any duly authorized agents or employees to examine the books, papers and records under the operator's control, or who shall willfully make any incomplete, false or fraudulent return shall be subject to a civil penalty as provided in Subdivision 12, and in Section 130 or may be charged as a misdemeanor.

**Subd. 19 Petition for Review.** Any operator aggrieved by any notice, order or determination made by the Tax Administrator under this section may file a petition for review detailing the operator's reasons for contesting the notice, order or determination.

(a) The petition for review shall contain the name, address, phone number, location of the lodging and detailing the operator's reason for review.

(b) The petition shall be filed with the City Administrator within ten (10) days after the



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notice, order or determination for which the review is sought has been mailed or served upon the person requesting review.

(c) The City Administrator shall set a date, time and place of hearing and give the petitioner not less than five (5) days written or personal service before the date of the hearing.

**Subd. 20 Hearings.** The Council acting as the Hearing Officers, or a Hearing Officer or Officers designated by it, after due notice, shall conduct a Hearing. The Council may designate Hearing Officers, consisting of one or more persons, to conduct the Hearing. Petitioner may be represented by Counsel for petitioner's choosing and at petitioner's expense. The person or persons conducting the Hearing shall make written findings of fact and conclusions based upon applicable provisions of this section and the evidence presented.

**Subd. 21 Appeals.** Any person aggrieved by the decision of the Hearing Officer may, within ten (10) days of filing the decision, file an appeal on the record to the District Court of Lake County.

**Subd. 22 Data Privacy.** Except for data submitted at Hearings as provided in Subdivision 20 and Appeals as provided in Subdivision 21, data collected from any person pursuant to this section shall be considered private data on individuals or non-public data pursuant to Minnesota Statutes § 13.01, *et seq.*

**Effective Date:** This amendment shall be effective January 1, 2008 and after publication according to law.

Adopted by the City Council this 1<sup>st</sup> day of October, 2007.

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ATTEST:

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Tom Smith, City Administrator

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Scott Johnson, Mayor