

ANALYSIS BY CITY ATTORNEY FOR THE CITY OF WILLIAMS OF AN ORDINANCE OF THE CITY OF WILLIAMS ADOPTING A TRANSIENT OCCUPANCY TAX IN THE CITY OF WILLIAMS

OPERATION OF THE PROPOSED TAX MEASURE AND ITS LEGAL EFFECT

At the present time there is no transient occupancy tax in the City of Williams.

The City Council of the City of Williams proposes to pass ordinance No. 0-2-82 which would impose a tax for the privilege of occupancy in any hotel, each transient to pay the amount of six percent (6%) of the rent charged by the operator.

A "YES" vote on the measure authorizes the City Council of the City of Williams, beginning January 1, 1983, to pass an ordinance which imposes such a six percent (6%) tax on transient hotel occupants.

A "NO" vote on the measure is a vote to prohibit the City Council of the City of Williams from passing an ordinance or any law which would impose a six percent (6%) tax or any other amount of tax on transient hotel occupants.

s/ Kenneth A. Wilson
City Attorney
City of Williams

ORDINANCE NO. 0-2 82

AN ORDINANCE OF THE CITY OF WILLIAMS ADOPTING A TRANSIENT OCCUPANCY TAX, COLLECTION PROCEDURE, APPEALS, VIOLATIONS AND PENALTIES

The City Council of the City of Williams, does ordain as follows:

Chapter 3.24

TRANSIENT OCCUPANCY TAX

Sections:

3.24.010	Title.
3.24.020	Definitions.
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3.24.040	Exemptions.
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3.24.070	Reporting and remitting.
3.24.080	Penalties and interest.
3.24.090	Failure to collect and report tax—Determination of tax administrator.
3.24.100	Appeal.
3.24.110	Records.
3.24.120	Refunds.
3.24.130	Actions to collect.
3.24.140	Violations—Misdemeanor—Penalty.

3.24.010 Title. The ordinance codified in this chapter shall be known as the uniform transient occupancy tax ordinance of the city.

3.24.020 Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

A. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

B. "Occupancy" means the use or possession or the right to the use or possession of any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

C. "Operator" means the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

D. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

E. "Rent" means the consideration charged, whether or not received for the occupancy of space in a hotel valued in money, goods, labor or otherwise, including all receipts, cash, credit, and property and services of any kind or nature, without any deduction therefrom whatsoever.

F. "Tax administrator" means the city clerk or her authorized agent.

G. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to January 1, 1983 may be considered.

3.24.030 Tax imposed. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of six percent (6%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator.

3.24.040 Exemptions. No tax shall be imposed upon:

A. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided;

B. Any federal or state of California officer or employee when on official business;

C. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law of international treaty.

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

3.24.050 Operator's duties. Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether 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, of that, if added, any part will be refunded except in the manner hereinafter provided.

3.24.060 Registration. Within thirty days after January 1, 1983, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the tax administrator and obtain from him a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

A. The name of the operation;

B. The address of the hotel;

C. The date upon which the certificate was issued;

D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, not to operate a hotel 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 this city. This certificate does not constitute a permit."

3.24.070 Reporting and remitting. Each operator shall, on or before the last day of the month following the close of each calendar quarter or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax, and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason.

All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator.

3.24.080 Penalties and interest. A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.

C. Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Interest. In addition to the penalties imposed, any operator 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 on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

3.24.090 Failure to collect and report tax—Determination of tax by administrator. If any operator fails or refuses to collect said tax and to make within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax administrator procures such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within ten days after the serving or mailing of such notice make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest, and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed. After such hearing the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest, and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 3.24.100.

3.24.100 Appeal. Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest, and penalties, if any, may appeal to the council by filing a notice of appeal with the city clerk, within fifteen days of the serving or mailing of the determination of the tax due. The council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known place of address. The findings of the council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3.24.110 Records. It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times.

3.24.120 Refunds. A. Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter it may be refunded as provided in subsections B and C of this section provided a claim in writing thereof, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within three years of the date of payment. The claim shall be on forms furnished by the tax administrator.

B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient directly to the tax administrator, or when the transient having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant established his right thereto by written records showing entitlement thereto.

3.24.130 Actions to collect. Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for recovery of such amount.

3.24.140 Violations—Misdemeanor—Penalty. Any person violating any of the provisions of this chapter is guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars or by imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment.

Any operator or other person who fails or refuses to register as required herein or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the tax administrator, or who renders a false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as aforesaid.