

ARTICLE II. LODGER'S TAX¹

Sec. 36-31. Purpose of article.

The purpose of this article is to impose a tax which will be borne by transient persons using commercial lodging accommodation, which tax will provide revenues for advertising the community, improving its services, financing new facilities, attracting conferences, conventions and meetings of commercial, cultural, educational and social origin to the county and the state.

(Code 1985, § 4.04.010)

Sec. 36-32. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Gross taxable rent means the total amount of rent paid for lodging not including the state gross receipts tax or county sales tax.

Lodging means the transaction or furnishing of 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 rooms or other units of accommodations in or at a taxable premises. In addition to this definition, the term "lodging" means the rooms or other accommodations furnished by a vendor to a vendee by the taxable service of lodging.

Occupancy tax means the tax on lodging as authorized by this article.

Person means a corporation, firm, other body corporate partnership, association or individual, 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, any corporation, department, instrumentality or agency of the federal or state government, or any political subdivision of the state.

Rent means the consideration received by a vendor in money, credits, property or other consideration value in money for lodgings subject to an occupancy tax.

Taxable premises means a hotel, apartment, apartment hotel, apartment house, lodge, lodginghouse, roominghouse, motor hotel, 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 used for lodging.

Vendee means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

Vendor means a person furnishing lodgings in the exercise of the taxable service of lodging.

(Code 1985, § 4.04.020)

Cross reference(s)—Definitions generally, § 1-2.

¹Cross reference(s)—Lodger's tax advisory board, § 8-221 et seq.

Sec. 36-33. Imposition.

- (a) There is imposed an occupancy tax of revenues of three percent of gross taxable rent for lodging paid to vendors after December 1, 1978.
- (b) There is imposed an additional occupancy tax of two percent of gross taxable rent for lodging paid to vendors after April 1, 1990. All of the proceeds derived from this additional tax of two percent shall be used in the manner authorized in NMSA 1978, § 3-38-21.

(Ord. No. 85-116, § 1, 1990; Code 1985, § 4.04.030)

Sec. 36-34. Exemption.

The occupancy tax shall not apply:

- (1) If the vendee:
 - a. Has been a permanent resident of the taxable premises for a period of at least 30 consecutive days; or
 - b. Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least 30 consecutive days.
- (2) If the rent paid by a vendee is less than \$2.00 a day;
- (3) To lodging accommodations at institutions of the federal government, the state or any political subdivision;
- (4) To lodging accommodations at religious, charitable, educational or philanthropic institutions including, without limitation, such accommodations at summer camps operated by such institutions;
- (5) To clinics, hospitals or other medical facilities;
- (6) To privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or
- (7) If the taxable premises does not have at least three rooms or three other units of accommodations for lodging.

(Code 1985, § 4.04.040)

Sec. 36-35. Licensing.

- (a) No vendor shall engage in the business of providing lodging in the county who has not first obtained a license as provided by this article.
- (b) Applicants for a vendor's license shall submit an application to the manager stating:
 - (1) The name of the vendor including identification of any person who owns or operates or both owns and operates a place of lodgings and the name or trade names under which the vendor proposes to do business and the post office address;
 - (2) A description of the facilities, including the number of rooms;
 - (3) A description of other facilities provided by the vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car, stenographic, tailor or others, and a statement

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- identifying the license issued, to whom issued, the authority issuing, and the period for which issued, if applicable, and the identification number provided by the bureau of revenue of the state;
- (4) The nature of the business practices of the vendor and to what extent, if any, his business is exempt from the lodger's tax;
 - (5) Other information reasonably necessary to effect a determination of eligibility for such license.
- (c) The manager shall review applications for a license within ten days of receipt of the application and grant the license in due course if he finds the applicant is doing business subject to the lodger's tax.
 - (d) If the manager finds that the applicant is not qualified to do business subject to the lodgers' tax, he shall, not more than ten days after receipt of the application, advise the applicant of his decision and give the reasons therefor. The notice of such action shall be given by registered mail, postage prepaid, addressed to the applicant at the address given on the application, deposited in the post office at the county on the date of the action.
 - (e) If the manager finds the applicant not exempt from the requirement of the lodger's tax, he shall, not more than ten days after receipt of the application, advise the applicant of his decision and give the reason therefor.
 - (f) An applicant who is dissatisfied with the decision of the manager may appeal the decision to the council by written notice to the manager of such appeal, to be made within 15 days of the date of such decision of the manager on the application. The matter shall be referred to the council for hearing at a regular or special meeting in the usual course of business. The decision of the council shall be expressed in writing and be communicated in the same manner as the decision of the manager is transmitted. The action of the council shall be final.
 - (g) The manager shall issue the appropriate license or other notice conforming to the decision made by the council.

(Code 1985, § 4.04.050; Ord. No. 02-256, § 63, 7-7-2015)

Sec. 36-36. Collection of tax; reporting.

- (a) Every vendor providing lodging shall collect the tax thereon on behalf of the county and shall act as a trustee therefor.
- (b) The tax shall be collected from the vendees in accordance with the provisions of this article and shall be charged separately from the rent fixed by the vendor for the lodging.
- (c) On and after December 1, 1978, each vendor under this article shall be liable to the county for the tax provided in this article on the rent paid for lodging.
- (d) Each vendor shall make a report by the 25th day of each month on forms provided by the manager of the receipts for lodging paid to him in the preceding calendar month and shall remit therewith payment of the amounts due to the county. These amounts shall be placed by the county into a separate fund to be disbursed only for the purposes provided for in this article. The report shall include sufficient information to enable the county to audit the report and shall be verified on oath by the vendor.

(Code 1985, § 4.04.060; Ord. No. 02-256, § 63, 7-7-2015)

Sec. 36-37. Duty of vendor.

The vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use of such facilities. Such records shall be maintained in the county and shall be open to the inspection of the county during reasonable hours and shall be retained for three years.

(Code 1985, § 4.04.070)

Sec. 36-38. Failure to pay or make return; computation; penalty; notice.

- (a) If any vendor makes a return as required by this article without paying the tax when due, he shall be liable for the tax and a penalty equal to ten percent thereof, but not less than \$100.00 penalty, in addition to the tax, without notice from the county with regard thereto. Promptly thereafter, the county shall give the delinquent vendor written notice of such estimated tax penalty and interest, which notice shall be served personally or by certified mail.
- (b) If any vendor neglects or refuses to make a return and pay the tax as required by this article, the manager shall make an estimate based upon an examination of the vendor's books and records, or upon any information in his possession, or that may come into his 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 such 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 thereof, but not less than \$100.00. Promptly thereafter, the manager shall give the delinquent vendor written notice of such estimated tax, penalty and interest, which notice shall be served personally or by certified mail.
- (c) If payments are not made by the vendor within 15 days of such notice, the manager 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 of not more than one percent per month, the costs of collection and reasonable attorney's fees incurred in connection therewith.
- (d) A vendor is liable for the payment of the proceeds of any occupancy tax which the vendor failed to remit to the county due to his failure to collect the tax due or otherwise.

(Ord. No. 85-160, § 1, 1992; Code 1985, § 4.04.080; Ord. No. 02-256, § 64, 7-7-2015)

Sec. 36-39. Administration.

The duties assigned to the administrator in this article may be delegated to the department of finance or other departments or officials, in whole or in part, as to the manager shall appear useful.

(Code 1985, § 4.04.090; Ord. No. 02-256, § 65, 7-7-2015)

Cross reference(s)—Administration, ch. 2.

Sec. 36-40. Divulging information.

Except as otherwise required by law or judicial order, the county, its officers or employees shall not divulge any information gained from any return filed under the provisions of this article. Nothing contained in this section shall be considered to prohibit the delivery to a person, or his duly authorized representative, a copy of any return or report filed in connection with his tax; nor to prohibit the publication of statistics so classified as to prevent the identification of a particular report or return and the items thereof; or the inspection of the reports or returns of any person by or against whom an action or proceeding is contemplated or has been instituted under this article

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by the county or appropriate officers or employees of the county. Reports and returns shall be preserved for three years and thereafter until the council orders them destroyed. Any person violating any provisions of this section shall be punished in the manner provided for the violation of this Code. Any officer or employee violating any provision of this section shall also be dismissed from office and be incapable of holding county office or employment for a period of one year.

(Code 1985, § 4.04.100)

Sec. 36-41. Liens for occupancy tax; payment; certificate of liens.

- (a) The occupancy tax imposed by the county constitutes a lien in favor of the county upon the personal and real property of the vendor providing lodgings in the county. The lien may be enforced as provided in NMSA 1978, §§ 3-36-1—3-36-7. Priority of the lien shall be determined from the date of filing.
- (b) Under process or order of court, no person shall sell the property of any vendor providing lodgings in the county without first ascertaining from the county clerk the amount of any occupancy tax due the county. Any occupancy tax due the county shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.
- (c) The county clerk shall furnish to any person applying for such a certificate, a certificate showing the amount of all liens in the records of the county against any vendor pursuant to this article.

(Ord. No. 85-160, § 2, 1992; Code 1985, § 4.04.120)

Sec. 36-42. Penalties for violation of article.

Any person who shall be convicted of the violation of any provisions of this article for a failure to pay the tax, to remit the proceeds to the county or to account properly for any lodging and the tax proceeds pertaining shall be punished by a fine not exceeding \$500.00 or by imprisonment not exceeding 90 days, or by both such fine and imprisonment.

(Ord. No. 85-117, § 1, 1990; Ord. No. 85-160, § 3, 1992; Code 1985, § 4.04.130)

Sec. 36-43. Audit of vendors.

The county 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 that rent is collected. Copies of audits completed shall be filed annually with the local government division of the department of finance and administration.

(Ord. No. 85-160, § 4, 1992; Code 1985, § 4.04.140)

Sec. 36-44. Disputes.

Any vendor who claims any refund for overpayment of the occupancy tax or who disputes the findings of any audit performed pursuant to section 36-43 or any exemptions pursuant to section 36-34 shall, within ten days of overpayment resulting in a claim for refund, delivery of the audit performed, or application of the exemption, submit the matter in writing to the county manager for a determination. The manager shall, within ten days, decide the dispute or claim and notify the claimant in writing. Any claimant who is dissatisfied with the manager's decision may appeal the decision to the council by written notice to the manager of such appeal, to be made within 15 days of the date of such decision. The appeal shall then be referred to the council for hearing at a regular

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or special meeting in the usual course of business. The decision of the council shall be expressed in writing and communicated in the same manner as the decision of the manager is transmitted. The action of the council shall be final.

(Ord. No. 85-160, § 5, 1992; Code 1985, § 4.04.150; Ord. No. 02-256, § 66, 7-7-2015)

Secs. 36-45—36-70. Reserved.