

COUNTY OF LEHIGH

HOTEL ROOM RENTAL TAX

RULES AND REGULATIONS

EFFECTIVE

SEPTEMBER 4, 2005

PART I
GENERAL

A. PURPOSE

The purpose of these Rules and Regulations are to establish the procedure for the collection of the Hotel Room Rental Tax by the Operators in the Market Area of Hotels located in the County of Lehigh from Patrons, establish the procedures for the remittance of the Hotel Room Rental Tax by the Operators to the County of Lehigh Fiscal Officer ("Fiscal Officer"), establish the official reporting procedures and forms to be utilized by the Operators and other relevant rules and regulations concerning the collection of the Hotel Room Rental Tax.

B. DEFINITIONS

As used hereinafter, those terms which are defined in Section 2 of Ordinance ("Ordinance"), known as the County of Lehigh Hotel Room Rental Tax Ordinance, shall have the identical meaning for the purpose of these Rules and Regulations and are incorporated herein by reference.

PART II
RULES AND REGULATIONS

A. IMPOSITION OF TAX

1. Rate of Tax: The Hotel Room Rental Tax is imposed at the rate of four percent (4%).
2. Collection of Tax by the Operator: The Hotel Room Rental Tax shall be Collected by the Operator, at the time of the Transaction, from each Patron who pays the Consideration of the Transaction.
3. Effective Date: The Hotel Room Rental Tax shall be applicable to all Transactions above, which occur on or after the effective day of the September 4, 2005 Ordinance.

B. REGISTRATION

Within seven (7) days after the effective date of the Ordinance or within thirty (30) days after commencing business, whichever is later, each Operator of any Hotel shall register the Hotel with the Fiscal Officer, by completing the application form provided by the Fiscal Officer. The operator of the Hotel shall obtain from the Fiscal Officer a temporary or permanent certificate of authorization evidencing the Operator's authority to collect the Hotel Room Rental Tax, and the certificate shall at all times be posted in a conspicuous place on the premises of the Hotel.

C. ITEMS SUBJECT TO TAX

1. Room Occupancy: The occupancy of any room , for consideration, having at least one bed or sleeping accommodation, is subject to the tax. This shall include any group or suite of rooms in which a patron has occupancy, at least one of which rooms has at least one bed or other sleeping accommodation, and between which there is direct access by any means including a doorway or inside hallway.

~~2. Room Occupancy, Price Which Include Meals: When the amount charged by a hotel operator for occupancy includes the price of any meals, only that portion of the consideration attributed to the room occupancy shall be subject to tax. The price for meals, when not separately stated and itemized by the operator, shall be presumed to be distributed as follows — unless, upon application of a hotel operator, the Office of the County Fiscal Officer approves a different basis:~~

~~Allocation for Charges for Rooms and Meals~~

	<u>Room</u>	<u>Meals</u>
Breakfast only	93%	7%
Lunch or Dinner only	85%	15%
Breakfast & Lunch, Breakfast & Dinner, or Lunch & Dinner	75%	25%
Breakfast, Lunch & Dinner	65%	35%

2. Room Occupancy, Price Which Include Meals: In determining the amount of consideration paid for the room which is subject to the hotel room rental tax, the following rules apply. The total cost of room packages which bundle the cost of the room with other charges (meals, beverages, entertainment, etc.) will be subject to the room rental hotel tax unless the hotel operator maintains individual folio records which details the individual charges for room rental and other ancillary charges. If room package charges are supported by a detail listing of the charges, only that portion of the charge for room rental is subject to the hotel room rental tax.

D. PERMANENT RESIDENTS

The tax is imposed for occupancy by transients and not by permanent residents. After a person has occupied or has the right to occupy for 30 consecutive days, he is no longer a "transient" as defined in the Ordinance. His status as a "permanent resident" is effective for the rental period during which, or at the expiration of which the 30th consecutive day of occupancy is completed and continues thereafter so long as his occupancy remains continuous and uninterrupted. Thus, if a person completes his 30th day of consecutive occupancy during, or at the expiration of, a particular rental period, he is a permanent resident for that entire rental period even though, during a part of the period, he had not yet established his status as a permanent resident and for each rental period thereafter in which his occupancy continues uninterrupted. He is not a permanent resident, however, as to any rental period prior to the particular rental period during or at the expiration of which he completed his 30th day. As to such prior rental periods, he was and remains a "transient." If a hotel operator collects tax in advance for a rental period during or at the expiration of which is or becomes exempt for tax by reason of the lessee's becoming a permanent resident, the operator must refund the tax so collected to the "permanent resident" and should not report or remit such erroneously collected tax to the County of Lehigh Fiscal Office.

A rental period, for the purpose of this subsection, is a period of time, for example, a day, week, month, or the like during which, under and subject to the terms of a legally enforceable contract, a hotel and is legally bound to pay consideration therefor. (In the absence of evidence to the contrary, it is presumed that a rental period runs from the date of first occupancy or first payment of consideration to the date on which a subsequent payment on consideration is due.) A mere statement of intention to occupy, or to permit occupancy, on the part of an occupant or hotel operator, or both, does not create a rental period unless the period in question is the subject of a legally enforceable contract.

The occupancy or right of occupancy must be for 30 consecutive days. A person who merely has a right to use a room or rooms on intermittent days of a week or month cannot become a "permanent resident" even though he cumulatively occupies for more than 30 days.

The status of permanent residents only continues so long as the occupancy or right of occupancy continues uninterrupted. A permanent resident who quits his hotel and breaks his consecutive and continuing occupancy loses his status as a permanent resident; and, with respect to his next occupancy, he does not resume his status as a permanent resident unless and until he again completes 30 consecutive days of occupancy. A transfer from one hotel to another, even though both hotels are owned by the same operator, is a break in occupancy. However, a mere change of rooms in the same hotel is not a break in occupancy.

A hotel patron who is an employee of organization renting a room for 30 or more consecutive days is considered a permanent resident. A listing of hotel guest names on the letterhead of the exempt organization and signed by an authorized representative of the exempt organization is acceptable. As an alternative, a copy of the vendor check (used to pay for the room charges) from the organization is acceptable. Proof of payment by the organization must be maintained.

E. EXEMPTIONS

1. Permanent Residents: A permanent resident as that term is defined in the Ordinance is excluded from the Hotel Room Rental Tax liability upon the occupancy of any room or rooms in a hotel for any rental period during which, or at the expiration of which, he is or becomes a permanent resident.

2. Ambassadors, Ministers and Consular Officers of Foreign Government: Ambassadors, Ministers and other diplomatic representatives of foreign government properly accredited to the United States are exempt from tax upon their occupancy of rooms. This exemption does not apply to consular officers or to officers of foreign governments other than those specified in this section, unless exemption arises from treaties or reciprocal agreements existing between such foreign governments and the United States.
 - (a) Ambassadors, ministers and other diplomatic representatives of foreign governments should submit written proof that they are properly accredited to the United States. Consular officers and officials of foreign governments should submit written proof of the treaty or agreement under which similar exemption is granted by their country to consular officers and officials of the United States, together with proof that such treaty or reciprocal agreement is presently in effect and that they are an officer or official entitled to prerogatives thereunder. If exemption has already been accorded under the sales and use tax portion of the Tax Reform Code of 1971 (72 P.S. ss 7101-8203) the numbered identification card is valid for Hotel Room Rental Tax purposes.
 - (b) If a request for exemption from the Pennsylvania Hotel Occupancy Tax has been approved, the numbered identification card issued to the applicant will be accepted as proof of exemption from the Hotel Room Rental Tax. This card shall be shown by the exempt occupant to the hotel operator whenever a claim for exemption is made.

3. Occupancy of Hotel Rooms by United States Government:

Occupancy of hotel rooms by the United States Government shall be exempt from tax in accordance with the following:

 - (a) Occupancy of rooms by the Government of the United States, or its agencies, or by an employee or representative of the Government of the United States or its agencies, when such occupancy is solely for official purposes and the consideration is paid by the Government of the United States or its agencies, is exempt from tax.

(b) Occupancy of rooms by National Banks, Federal Savings & Loan Associations, Joint Stock Land Banks, National Park Commissioners, or their employees or representatives, or by Federal licensees, such as warehouses, stockyards, construction contractors engaged in the improvement of real estate owned by a Federal agency, or similar corporations, companies, institutions, or persons, or their employees or representatives, regardless of the purpose of the occupancy is not exempt from Hotel Room Rental Tax. Members of the Armed Forces are not exempt from tax upon occupancy of rooms unless acting as authorized representatives of the Government of the United States or one of its agencies and are otherwise entitled to exemption under the provisions of paragraph (a) of this subsection.

4. Occupancy of Hotel Rooms by Commonwealth of Pennsylvania:

Occupancy of rooms by the Commonwealth of Pennsylvania, or its instrumentalities, or by an employee or representative of the Commonwealth of Pennsylvania or its instrumentalities when such occupancy is solely for official purposes and the consideration is paid by the Commonwealth of Pennsylvania or its instrumentalities, is exempt from tax.

5. Occupancy of Hotel Rooms by Other Exempt Entities:

Occupancy of rooms, the charges for which are billed to and paid by the following organizations, shall be exempt from tax. Charges paid by employees or other agents of these organizations shall be subject to tax even though the employee or agent is reimbursed by the exempt organization:

- (a) Federal Credit Union organized under the provision of the "Federal Credit Union Act" of June 26, 1934, as amended (P.L. 86-385, dated September 22, 1959) (12 U.S.C. ss 1751 et seq.).
- (b) Pennsylvania Credit Unions formed and incorporated under the provisions of the "Credit Union Act" of September 20, 1961. (P.L. 1548, No. 658) (15 P.S. ss 12301-12333).
- (c) Public Authorities created under the Municipal Authorities Acts of 1935 and 1945 (53 P.S. ss 310-322).
- (d) Co-operative Agriculture Associations required to pay corporate net income tax under the provisions of the "Co-operative Agricultural Association Corporation Net Income Tax Act" of May 23, 1945 (P.L. 893, No. 360) (72 P.S. ss 3430-31, 3420-30).
- (e) Electric Cooperative Corporations formed under the "Electric Cooperative Corporations Act" of June 21, 1937 (P.L. 1969, No. 389) (15 P.S. ss 12401-12438).
- (f) Parking Authorities created under the Parking Authorities Law of June 5, 1947 (P.L. 458) (53 P.S. ss 341-374).

- (g) Industrial Development Authorities created under the Industrial Development Law of August 23, 1967 (P.L. 251) (73 P.S. ss 371 386).
 - (h) Any other organization which has received written approval from the Technical Advisory Staff of the Pennsylvania Department of Revenue recognizing its exempt status from the payment of municipal taxes from the Commonwealth or Federal statute.
 - (i) Persons and families who are lodging due to the status as a low-income person or displaced persons and families in transition to permanent housing are exempt regardless of length of stay. Such status may be documented by any non-profit agency located in the county or any agency of the county or state government.
6. Records of Exempt Occupancies: The hotel operator shall maintain records to support and identify all exempt occupancies. These records shall include a statement from the hotel operator that such operator has examined documentation tendered by any patron claiming to be exempt from this tax, and has found such documentation supportive of such exemption claimed. Exemption certificates, letters of exemption, direct payment permits, and other documents relating to exemptions from tax issued under the provisions of the sales and use tax portion of the Tax Reform Code of 1971 (72 P.S. ss 7101-8203) or regulations promulgated thereunder, are of no force and effect with respect to the tax imposed by the Hotel Room Rental Tax with the exception noted in subsection (2) of this section.
7. Others Not Exempt: No person or entity other than those referred to by the preceding paragraphs of this subsection shall be exempt from the Hotel Room Rental Tax. Occupancy by employees or representative of political subdivisions of the Commonwealth is not exempt from Hotel Room Rental Tax, regardless of the nature of the business upon which the employee or representative is engaged, and regardless of the identity of the person or agency paying for the occupancy. Exemption from the sales and use tax portion of the Tax Reform Code of 1971 (72 P.S. ss 7101-8203) granted to persons, organizations, charities, or institutions, including exemptions granted to religious organizations, charities, education institutions, and the like, are not applicable to the Hotel Room Rental Tax; and such persons, organization, or institutions are required to pay tax upon their occupancy of hotel rooms.

F. REPORTS, RETURNS, PAYMENTS AND COLLECTION OF TAX

1. Collection from Patron: The Operator shall collect the Hotel Room Rental Tax imposed by the Ordinance from the Patron of the Room, and remit the same to the Fiscal Officer. The Operator shall be liable to the County for the payment of the Hotel Room Rental Tax to the County as provided in the Ordinance.

~~2. Monthly Return by Operator: Every operator shall transmit to the County Fiscal Officer, on or before the 20th day of each month, a return which shall contain the previous month information for which the return is made. The return shall include the amount of consideration received for the transactions during the month for which the return is made, the amount of tax collected by the operator during that period, number of rooms available, and such other information as the County Fiscal Officer may require.~~

2. Monthly Return by Operator: Every operator shall transmit to the County Fiscal Officer, on or before the 20th day of the month unless an alternate written arrangement between the hotel operator and the County Fiscal Officer is maintained by the hotel operator.

Monthly returns received after the due date will be subject to interest as shown in section F.5, postmark will be used to determine timeliness of the return.

The hotel operator shall report actual hotel room rental tax collected each month as well as the calculated hotel tax due. The hotel operator shall remit the higher of the calculated hotel tax due or the actual hotel tax collected unless the difference is reconciled and explained by the hotel operator.

Any hotel tax amounts collected from hotel guests in error and not refunded should be remitted to the County of Lehigh.

Operators should furnish a copy of the “Hotel Room Rental Tax – Exemptions” form (or and acceptable substitute) with the monthly tax reporting form. Documentation supporting exempt revenues shall be retained at the local hotel (copies of the PA exemption form, individual identification and folio for each exempt stay claimed).

3. Forms: Every report and return shall be made upon the official form furnished by the Fiscal Officer. The Fiscal Officer reserves the right to, from time to time, amend and/or modify any form. The Fiscal Officer also reserves the right to develop any and all forms to effectuate and implement the Ordinance or these Rules and Regulations. A copy of the current official forms are attached.

4. Payment to the Office of the County Fiscal Officer: At the time of filing the returns, the Operator shall compute and timely and unconditionally remit to the Fiscal Officer in immediately available funds the Hotel Room Rental Taxes collected by the Operator.

5. Interest for Late Returns: If any amount of tax due is not remitted by the due date, interest at the rate of 1.5% shall be added for each month or fraction thereof during which the Hotel Room Rental Tax shall remain unpaid or not properly remitted in accordance with these Rules and Regulations.

G. FAILURE TO COLLECT AND REPORT TAX, DETERMINATION OF TAX BY COUNTY FISCAL OFFICER, FAILURE TO REMIT TAX

1. Collection and Report:

If any Operator shall fail to register with the Fiscal Officer or shall fail or refuse to collect the Hotel Room Rental Tax under these Rules and Regulations or fails or refuses to produce any report or form required by the Rules and Regulations, the Fiscal Officer shall proceed in such manner as the Fiscal Officer shall deem proper to obtain facts and information on which to base the estimate of the Hotel Room Rental Tax due, together with any interest, costs and attorney's fees. As soon as the Fiscal Officer has procured the facts and information as may be obtained, the Fiscal Officer shall determine the amount of Hotel Room Rental Tax due and payable by the Operator, together with any interest, costs and attorney's fees (the Determination").

The Fiscal Officer shall give a notice of the Determination by personal service or by United States mail, postage prepaid, addressed to the Operator at the Operator's last known place of business. The notice shall include a summary of the facts, information and calculations supporting the amount assessed in the Determination. The Operator may within ten (10) days after the service of the Determination make application in writing to the Fiscal Officer for a hearing on the amount assessed in the Determination.

If the Operator does not make such application within the time prescribed, the amount due under the Determination shall become final and conclusive and immediately become due and payable.

If the Operator does provide such application, the County shall give no less than five (5) days written notice to the Operator of a hearing to show cause why the Determination is improper. At such hearing, the Operator may appear and offer evidence why the Fiscal Officer's Determination is improper. At the conclusion of the hearing, the Fiscal Officer shall ascertain the proper Hotel Room Rental Tax due, together with any interest, costs and attorney's fees and shall provide written notice to the Operator of the total amount due (the "Assessment"). The Assessment shall be payable within thirty (30) days unless an appeal is taken pursuant to these Rules and Regulations.

2. Failure to Remit:

If an Operator fails to timely remit the Hotel Room Rental Tax collected by the Operator to the Fiscal Officer, the Fiscal Officer shall provide at least ten (10) days written notice to the Operator of the tax, interest, cost and attorney's fees being to be assessed on such untimely remittance. If the Operator fails to remit the collected Hotel Room Rental Tax,

together with any interest, costs and attorney's fees within ten (10) days from such notice, the Fiscal Officer or its designee shall proceed with the filing of any and all claims and/or actions against the Operator in the Court of Common Pleas of Lehigh County.

Each time that the operator of a hotel within the County of Lehigh fails to collect the tax from a patron or to timely pay it over to the County shall be a violation of this Ordinance. A violation shall constitute a summary offense, punishable by a fine not exceeding Six Hundred (\$600.00) Dollars.

All unremitted tax, fines, penalties and interest may be collected by suit, brought in the name of the County, as provided under applicable state law.

The collection of this tax which is public funds is subject to all Rules and Regulations governing the fiduciary obligation of public funds.

H. APPEAL

Any Operator aggrieved by any decision of the Fiscal Officer with respect to the amount due for the Hotel Room Rental Tax, interest, costs and attorney's fees may appeal the decision of the Fiscal Officer to the Court of Common Pleas of Lehigh County, pursuant to the applicable law.

I. RECORDS

It is presumed that all Rooms are subject to the Hotel Room Rental Tax until the contrary is established by accurate records of the Operator. The burden of proving that the Transaction is not taxable is upon the Operator and the Operator must demonstrate the same through accurate records. In any case where an Operator fails to maintain adequate records as required under these Rules and Regulations, any Room for which there is not adequate records shall be deemed to be Occupied for the entire period for which the supporting records are lacking.

It shall be the duty of every Operator liable for the collection of the Hotel Room Rental Tax to keep and preserve for a period of three (3) years, all records as may be necessary to determine the amount of such tax which the Operator was liable to collect and pay to the County. The records shall be maintained at the place of business where the subject Rooms were rented. The records shall include but are not limited to folios; lease agreements; general ledgers; night auditor and housekeeper reports; traffic summaries; source of business reports; and any other documents that support Room revenues and exemptions. The records shall be filed in a manner that allows ready access by the Fiscal Officer or the Fiscal Officer's authorized agents, who shall have the right to inspect the records during regular business hours of Operator and perform an audit thereon.

In all instances where an Operator claims an exemption to the Ordinance pursuant to Rules and Regulations section E., the Operator shall retain copies of identification cards of the Patron or other records indicating the exempt Patron's job number, employer, place of employment or other identifying information.

Hotel operators should make copies of each exempt stay folio and attach a separate, signed PA exemption form for each exempt stay. Also, a copy of the employee photo ID or business card documenting the guest's affiliation to the exempt organization is required. Lehigh County form "Hotel Room Rental Tax – Exemptions." should be a summary of exempt stays for each month and should be supported by individual guest stay documentation.

J. REFUNDS

Whenever the amount of Hotel Room Rental Tax, interest, costs or attorney's fees has been overpaid, paid more than once, or erroneously collected or received by the Fiscal Officer under the Ordinance, the overpayment may be refunded to the Operator provided that a verified written claim is filed with the Fiscal Officer within three (3) years of the date of payment stating the specific grounds upon which the claim is founded. The operator must either return the refunded payment to the Patron or credit such amount to the Patron's account. If the Patron's whereabouts are unknown or unascertainable after reasonable investigation, such refund shall be resubmitted by the Operator to the Fiscal Officer and shall be subject to the applicable Escheat laws or statutes.

K. ACTIONS TO COLLECT

Any Hotel Room Rental Tax collected by an Operator that has not been paid to the Fiscal Officer shall be deemed a debt owed by the Operator to the County of Lehigh. Any Patron or Operator owing any monies to Lehigh County pursuant to the provisions of the Ordinance and these Rules and Regulations shall be liable to Lehigh County for the same. Any action to collect brought under the Ordinance or these Rules and Regulations shall be brought by the County of Lehigh or the County of Lehigh's designee.

Any actions brought under the Ordinance or these Rules and Regulations by Lehigh County or Lehigh County's designee, shall include the Hotel Room Rental Tax, any interest due under the Rules and Regulations, and any and all cost and attorney's fees associated with the collection thereof.

L. OTHER EFFECTS OF NON-PAYMENT OF TAX

The failure of an Operator to timely remit any tax due may constitute a breach of any other contract which an Operator has with the County and may disqualify an Operator from bidding upon or otherwise entering into a contract with the County.

M. RIGHT TO PRIVACY

All reports, returns and forms submitted to the Fiscal Officer are subject to public disclosure under the Pennsylvania Right to Know Law. The Fiscal Officer shall not disclose any confidential information which is protected by either state or federal statute, act or ordinance.

N. AMENDMENTS

The Fiscal Officer reserves the right to, from time to time, without advance notice, amend these Rules and Regulations. Any amendments to the Rules and Regulations shall be made available to the Operators.

