

## TOWN OF ONLEY TRANSIENT OCCUPANCY TAX ORDINANCE\*

\*State law reference - Tax on transient room rentals, Code of Virginia, § 58.1-3840.

### Sec. 1. Definitions.

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

*Hotel* includes but is not limited to any public or private hotel, inn apartment, hotel, hostelry, tourist home or house, motel, rooming house or other lodging to any transient, as defined in this section, for compensation.

*Lodging* includes but is not limited to any space or room furnished any transient.

*Person* includes but is not limited to any individual, firm, partnership, association, corporation, or any group of individuals acting as a unit, or any corporate or partnership officer or employee who is under a duty on behalf of such entity to collect, report, and/or remit under this Ordinance.

*Room rental* means the total charge, exclusive of any tax imposed on such charge, made by any hotel for lodging furnished any transient. If the charge for services or accommodations in addition to that of lodging and/or use of space, such portion of the total charge as represents only lodging and/or space rental shall be distinctly set out and billed to such transient by such hotel as a separate item.

*Mayor* means the mayor of the Town of Onley or an employee empowered by the Town Council to collect taxes.

*Transient* means the same individual or same group of individuals who, for a period of not more than 29 consecutive days, either at his own expense or another, obtains lodging or use of space in any hotel or travel campground, as defined in this section, for which lodging or use of space a charge is made.

*Travel campground* means any area, site, lot, field or tract of land offering spaces for recreational vehicles or campsites for transient dwelling purposes or temporary dwelling during travel, recreational or vacation uses.

### Sec. 2. Levy and rate.

There is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, on each and every transient a tax equivalent to two percent (2%) of the total amount paid for rental by or for any such transient to any hotel or travel campground.

**Sec. 3. Exceptions.**

(a) No tax shall be payable under this Ordinance on room rental paid to any hospital, medical clinic, convalescent home or home for the aged.

(b) No tax shall be payable under this Ordinance as to any lodging or rental which is exempt from taxation under the Virginia Retail Sales and Use Tax Act (Code of Virginia § 58.1-600 et seq.).

**Sec. 4. Enforcement.**

This Ordinance, in addition to enforcement as otherwise permitted by law, may also be enforced by way of injunctive relief to enjoin a violation by the circuit court of county or any other court of competent jurisdiction on complaint by the Town acting by and through the Mayor.

**Sec. 5. Penalty for Violation.**

Any corporate or partnership officer who is under a duty on behalf of such entity to collect, report, and/or remit the tax under this Ordinance or any other person required to collect, account for and pay over such tax who willfully fails to collect or truthfully account for and pay over such tax and any such officer or person who willfully evades or attempts to evade any other penalties provided by law, be guilty of a misdemeanor.

**Sec. 6. Collection procedure.**

Every person receiving any payment for room rental with respect to which a tax is levied under this Ordinance shall collect the amount of such tax so imposed from the transient on whom such tax is levied or from the person paying for such lodging is made. The taxes required to be collected under this section shall be deemed to be held in trust for the Town by the person required to collect such taxes until remitted as required in this Ordinance.

**Sec. 7. Reports and remittance.**

(a) The person responsible for collecting, reporting, and remitting the tax levied under this Ordinance shall make a report upon such forms and setting forth such information as the Town Council may prescribe and require. Such report shall show the amount of room rental charges collected and the tax required to be collected and shall be signed and delivered to the Mayor with a remittance of such tax. Such reports and remittances shall be made monthly on or before the 20th day of each month and shall cover the amount of tax collected during the month immediately preceding the month in which such reports and remittances are required.

If the remittance is by check or money order, the check or money order shall be made payable to the Town of Onley.

(b) Every corporation, partnership, firm, association, or group of individuals acting as a unit shall designate in writing to the Town an officer or employee of such corporation, partnership, firm, association, or group whose duty it is to collect, report, and remit such tax. Upon the failure of such entity or group to so designate, each officer of any such entity or group shall be deemed to have such duty to collect, report, and remit.

#### **Sec. 8. Interest and penalties.**

If any person shall fail or refuse to remit to the Town the tax required to be collected and paid under this Ordinance within the time and in the amount specified in this Ordinance, there shall be added to such tax by the Mayor a penalty in the amount of ten percent thereof and interest thereon at the rate of ten percent per annum, which shall be computed upon the taxes and penalty from the date such taxes are due and payable.

#### **Sec. 9. Failure or refusal to collect and support.**

(a) If any person shall fail or refuse to collect the tax imposed under this Ordinance and shall fail or refuse to make, within the time provided for in this Ordinance, the reports and remittances required, the Mayor shall cause to be prepared a notice thereof to such person, giving such person ten days in which to make the necessary reports and remit the appropriate tax, plus any applicable penalty and interest. The notice shall be posted to such person by registered or certified mail, return receipt requested, to the address on file with the Town or to the last known address of such person and/or shall be delivered by the police department. Failure to report and/or remit the appropriate tax, plus any applicable penalty and interest within the ten-day period after posting and/or delivery of such notice shall result in the immediate suspension of the business license of such person or the entity for which such person is charged for the collecting, reporting, and remitting of taxes, as well as the right of such business to operate within the Town.

(b) Upon the failure or refusal of any such person to thereafter report and remit the appropriate tax, plus any applicable penalty and interest as required under this Ordinance, the Mayor shall then proceed in such manner as he may deem best to obtain facts and information on what to base his estimate of the proper amount of such tax due, plus penalty and interest. The Mayor shall then proceed, based on the best information then available to him, to assess the amount of such tax, penalty and interest and shall cause such person to be notified thereof by registered or certified mail, return receipt requested, at the address on record with the Town or the last known address of such person and/or delivery by the police department.

(c) Upon the submission of any necessary report and the remitting of the appropriate tax, plus any applicable penalty and interest, or the payment of the tax if assessed by the

Mayor, plus any applicable penalty and interest, such business license of the person or entity for which such person is charged for the collection, reporting, and remitting of such taxes shall be deemed to be reinstated.

**Sec. 10. Records required.**

It shall be the duty of every person liable for the collection and payment to the Town of any tax imposed by this Ordinance to keep and to preserve for a period of four years such suitable records as may be necessary to determine and show accurately the amount of such tax as he may have been responsible for collecting and paying to the Town. The Mayor or his designated agent may inspect such records at all reasonable times.

**Sec. 11. Duty upon cessation of business.**

Whenever any person required to collect and remit to the Town any imposed tax by this Ordinance shall cease to operate or otherwise dispose of his business, the tax shall become due and payable and the person shall make to the Mayor a report and remittance thereof within 30 days following the month in which such business was terminated or disposition made thereof.