

Transient Lodging Tax

ATTENTION: LATE OR NO REPORTING OF THE TRANSIENT LODGING TAX IS NOT ACCEPTABLE AND WE WILL BE UPHOLDING THE \$250 DELINQUENT FEE. (ORDINANCE 95-005)

AN ORDINANCE RELATING TO THE IMPOSITION OF A TRANSIENT LODGING TAX

THE PEOPLE OF WALLOWA COUNTY, OREGON, ORDAIN AS FOLLOWS:

Section 1. TITLE

This ordinance shall be known as the Wallowa County Transient Lodging Tax Ordinance.

Section 2. TABLE OF CONTENTS

Section 1. Title	
Section 2. Table of Contents	
Section 3. Definitions	
Section 4. Tax Imposed	
Section 5. Scope of Tax Imposed	
Section 6. Rules for Collection of Tax	
Section 7. Operator's Duties	
Section 8. Exemptions	
Section 9. Registration of Operator	
Section 10. Due Date	
Section 11. Penalties and Interest	
Section 12. Deficiency Determinations	
Section 13. Redetermination	
Section 14. Lien	
Section 15. Refunds	
Section 16. Administration	
Section 17. Transient Lodging Tax Review Board	
Section 18. Tax Revenue Distribution	
Section 19. Appeals	
Section 20. Severability	

Section 3. DEFINITIONS

Except where the context otherwise requires the definitions given in this section govern the construction of this Ordinance. The use of the male pronoun in this Ordinance implies the female and the neutral as well.

(1) “Accrual Accounting” means the operator enters the rent due from a transient on his records when the rent is earned whether or not it is paid.

(2) “Cash Accounting” means the operator does not enter the rent due from a transient on his records until rent is paid.

(3) “Board” means the Transient Lodging Tax Review Board, which is The Wallowa County Board of Commissioners.

(4) “County” means Wallowa County, Oregon.

(5) “Motel” means any structure or any portion of any structure which is occupied or intended or designed for transient occupancy for less than thirty (30) days for dwelling, lodging, or sleeping purposes, and includes, but not limited to the following, any hotel, inn, tourist home, condominium, motel, public or private dormitory, bed and breakfast, private home, boarding house, vacation cabin or like facilities, or any similar structure or portions thereof so occupied.

(6) “Occupancy” means the use or possession for lodging or sleeping purposes of any room or rooms in a motel or any space in an RV Park.

(7) “Operator” means the person who is proprietor of the motel or RV park in any 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 Ordinance, and shall have the same duties and liabilities as the principal. Compliance with the provisions of this Ordinance by either the principal or the managing agent shall be considered to be compliance by both.

(8) “Person” means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(9) “Recreational Vehicle Park (RV Park)” means any public grounds or park which rents space to recreational vehicles, including but not limited to motor homes, trailers, tents.

(10) “Rent” means the consideration charged, whether or not received by the operator, for the occupancy of space in a motel or RV park valued in money, goods, labor, credits, property, or other consideration valued in money, without any deduction.

(11) “Rent Package Plan” means the consideration charged for rent and other considerations where a single rate is made for the total of all. The amount applicable to rent for determination of transient room tax under this Ordinance shall be the same charge made for rent when consideration is not a part of a package plan.

(12) "Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(13) "Tax Administrator" means the Wallowa County Treasurer.

(14) "Transient" means any individual who exercises occupancy or is entitled to occupancy in a motel or RV park for a period of less than thirty (30) consecutive calendar days counting portions of calendar days as full days. The days a transient checks out of the motel shall not be included in determining the thirty-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a motel or RV park shall be deemed to be a transient until the period or twenty-nine days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. A transient is any person who rents a private home, boarding house, vacation cabin, or like facility from any owner who personally rents such facilities incidentally to his own use thereof.

(15) "Transient Lodging Tax" means the revenue collected by the county for each transient room or recreational vehicle occupied within Wallowa County.

Section 4. TAX IMPOSED

For the privilege of occupancy in any motel or RV park on and after the effective date of this Ordinance, each transient shall pay a tax in the amount of five percent (5%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the County which is extinguished only by payment to the operator. The transient shall pay the tax to the operator of the motel at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the cash accounting basis, when earned if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment.

Section 5. SCOPE OF TAX IMPOSED

The tax imposed by this Ordinance shall apply to all motels and RV parks located within Wallowa County both inside and outside of all incorporated cities within said County and including Wallowa Lake State park.

Section 6. RULES FOR COLLECTION OF TAX BY OPERATOR

(1) Every operator renting rooms or RV parking spaces in this County, the occupancy of which is not exempted under the terms of this Ordinance, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the County.

(2) In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid; and the operator shall not be liable for the tax until credits are paid or deferred payments are made.

Section 7. OPERATOR'S DUTIES

Each operator shall collect the tax imposed by this Ordinance at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operators records an any receipt rendered by the operator. No operator of a motel or RV park shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent or that when added, any part will be refunded, except in the manner provided by this Ordinance.

Section 8. EXEMPTIONS

No tax imposed under this Ordinance shall be imposed upon:

(1) Any occupant for more than twenty-nine (29) successive calendar days; (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient).

(2) Any camps operated by not for profit organizations.

(3) Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people and intermediate and skilled nursing home facilities.

(4) Any occupant of Minam State Park or National Forest Camp Grounds.

Section 9. REGISTRATION OF OPERATOR

Every person engaging or about to engage in business as an operator of a motel in this County shall register with the Tax Administrator on a form provided by him. Operators engaged in business at the time of this Ordinance is adopted must register not later than thirty (30) calendar days after enactment of this Ordinance. Operators starting business after this Ordinance is adopted must register not later than fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The registration shall be signed by the operator. The Tax Administrator shall within ten (10) days after registration issue without charge to the operator a Certificate of Authority to the registrant to collect the tax from the occupant of the motel together with a duplicate thereof for each additional place of business for each registrant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the motel or RV park;
- (3) The date upon which the certificate was issued;
- (4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Lodging Tax Ordinance of the County of Wallowa by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by said County and remitting said tax to the Tax Administrator."

Section 10. DUE DATE: RETURNS AND PAYMENTS

- (1) The tax imposed by this Ordinance shall be paid by the transient to the operator at the time that rent is paid. All amount of such taxes collected by any operator are due and payable to the Tax Administrator quarterly beginning October 1, 1994, for the preceding calendar quarter and are delinquent on the last day of the month in which they are due.
- (2) At the time the taxes collected by the operator are due a return for the preceding quarters tax collections shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe by every operator liable for payment of tax.
- (3) Returns shall show the amount of tax collected or otherwise due for the related period. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.
- (4) The person required to file the return shall deliver the return together with the remittance of the amount of the tax due to the Tax Administrator at his office either by personal delivery or by mail. If the return is mailed the return must be received by the Tax Administrator by the due date.
- (5) For good cause, the Tax Administrator may extend, but not to exceed one month the time for making any return or payment of tax. No further extension shall be granted, except by the Board. Any operator to whom an extension is granted shall pay interest at the rate of two percent (2%) per month on the amount of tax due without proration for a fraction of a month. If a return is not filed and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this Ordinance.
- (6) If the operator has complied with the terms of this Ordinance and particularly the provisions of this section relating to prompt payment of taxes due and payable on to the Tax Administrator, he shall be permitted to deduct as a personal collection expense five percent (5%) of the amount of the taxes collected.

Section 11. PENALTIES AND INTEREST

(1) Delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Ordinance prior to delinquency shall pay in addition to interest a penalty of two percent (2%) per month of the amount of the tax due in addition to the amount of the tax.

(2) Fraud. If the Tax Administrator determines that the non-payment of any remittance due under this Ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in Paragraphs 1 and 2 of this section.

(3) Interest. In addition to the penalties imposed above, any operator who fails to remit any tax imposed by this Ordinance shall pay interest at the rate of two percent (2%) per month or fraction thereof without proration for portions of a month on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(4) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this Ordinance shall be merged with and become a part of the tax herein required to be paid.

(5) Petition for Waiver. Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated provided, however, the operator may petition the Board for waiver and refund of the penalty or any portion thereof, and the Board may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

Section 12. DEFICIENCY DETERMINATIONS

(1) Deficiency Determination. If the Tax Administrator determines that the returns are incorrect, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession. One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 11 above.

(a) In making a determination, the Tax Administrator may offset overpayment, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods or against penalties and interest on the underpayment. The interest on underpayment shall be computed in the manner set forth in Section 11 above.

(b) The Tax Administrator shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by certified mail. In the case of service by mail of any notice required by this Ordinance, the service is complete upon receipt by the operator, agent or employee, or if refused, the date of its refusal as shown by the United States Postal Department return receipt.

(c) Except in the case of fraud, intent to evade this Ordinance or authorized rules and

regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(d) Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

(2) Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make within the time provided in this Ordinance any report and remittance of said tax or any portion thereof required by this Ordinance, or makes a fraudulent return or otherwise willfully attempts to evade this Ordinance, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this Ordinance from any operator who has failed or refused to collect the same and to report and remit said tax, the Tax Administrator shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this Ordinance. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three years after discovery by the tax administrator of any fraud, intent to evade or failure or refusal to collect said tax or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten days after the tax Administrator has given notice thereof; provided, however, the operator may petition redemption and refund if the petition is filed before the determination becomes final as herein provided.

Section 13. REDETERMINATION

(1) Any person against whom a determination is made under Section 11 or any person directly interested may petition for a redetermination and redemption and refund within the time required in Section 11 hereof. If a petition for redetermination and refund is not filed within the allowable period, the Tax Administrator shall reconsider the determination; and if the person has so requested in his petition, shall grant the person an oral hearing and shall give ten days notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.

(2) The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing; and if an increase is determined, such increase shall be payable immediately after the hearing.

(3) The order or decision of the Tax Administrator upon a petition for redetermination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof unless appeal of such order or a decision is filed with the Board, within ten (10) days after service of such notice.

(4) No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions thereof.

Section 14. LIEN

The tax imposed by this Ordinance together with the interest and penalties herein provided and the filing fees paid to the Clerk of Wallowa County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this Ordinance shall be and until paid remain a lien from the date of its recording with the Clerk of Wallowa County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the motel of an operator and may be foreclosed on and sold as may be necessary to discharge said lien if the lien has been recorded. Notice of lien may be issued by the Tax Administrator or his/her deputy whenever the operator is in default in the payment of said tax, interest, and penalty and shall be recorded and a copy sent by certified mail to the delinquent operator.

The personal property subject to such lien seized by any deputy or employee of the Tax Administrator may be sold by the department seizing the same at public auction after twenty (20) days notice given by two publications of a notice to such effect in a newspaper of general circulation within the County. The notice required hereunder shall be published not less than seven days apart.

Any lien for taxes as shown on the records of the proper County official shall upon the payment of all taxes, penalties, and interest thereon be released by the Tax Administrator when the full amount determined to be due has been paid to the County, and the operator or person making such payment shall receive a receipt therefore stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied.

Section 15. REFUNDS

(1) Operators' Refunds. Wherever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Ordinance, it may be refunded provided a verified claim in writing therefore stating the specific reason upon which the claim is founded is filed with the Tax Administrator within three years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded, or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to each operator, his administrators, executors or assignees.

(2) Transient Refunds. Whenever the tax required by this Ordinance has been collected by the operator and deposited by the operator with the Tax Administrator and it is later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may

be refunded by the Tax Administrator to the transient provided a verified claim in writing therefore, stating the specific reason on which the claim is founded is filed with the Tax Administrator within three years from the date of payment.

Section 16. ADMINISTRATION

(1) Transient Lodging Tax Agency Fund. The Tax Administrator shall place all monies received pursuant to this order in the Transient Lodging Tax Agency Fund.

(2) Records Required from Operators, etc. Form. Every operator shall keep guest records of room and parking space sales and accounting books and records of room and parking space sales. All records shall be retained by the operator for a period of three years and six months after they come into being.

(3) Examination of Records, Investigations. For the purpose of enforcing Section 12 of this Ordinance, if the Tax Administrator has reason to believe that the returns are incorrect or that fraud, refusal to remit, evasion or operator delay has occurred as set forth in Section 11 of this Ordinance then the Tax Administrator or any person authorized in writing by him/her may examine during normal business hours the books, papers, and accounting records relating to room and parking space sales of any operator after ten (10) days notification to the operator liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made; if no return is made by the operator, to ascertain and determine the amount required to be paid. The extent and place of examination, if necessary, shall include operator's place of business or that of any lawful agent who has possession of the records.

(4) Confidential Character of Information Obtained – Disclosure Unlawful. Any person has a right to inspect any public record of a public body. The following are exempted from disclosure: Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Provided that nothing in this subsection shall be construed to prevent:

(a) The disclosure to or the examination of records and equipment by another County official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this Ordinance or collecting taxes imposed hereunder.

(b) The disclosure after the filing of a written request to that effect to the taxpayer himself, receivers, trustee, executors, administrators' assignees, and guarantors if directly interested of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the Wallowa County Counsel approves such disclosure, and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when in his or her opinion the public interest would suffer thereby.

(c) The disclosure of the names and addresses of any persons to whom the Transient Occupancy Registration Certificates have been issued.

(d) The disclosure of general statistics regarding taxes collected or business done in the County.

(5) Administrative Costs. To cover the administration costs of administering the Transient Lodging tax, the Tax Administrator shall remit sufficient monies collected to Wallowa County in order to reimburse the County for administrative, operating and audit expenses. This reimbursement to the County shall not exceed five percent (5%) of the Transient Lodging Tax collected, and is subject to review by the Board.

Section 17. Transient Lodging Review Board

Membership of the Board. The Wallowa County Board of Commissioners shall be the Transient Lodging Review Board.

(2) Review of the Board The Board shall:

(a) Have the duty of reviewing budget requests and drawing a budget annually allotting funds in accordance with the purposes of this Ordinance

(b) Set and follow parameters for reviewing and approving disbursement requests as outlined in Section 18.

(c) Make arrangements for the disbursement of funds in accordance with the budget.

(d) Perform an annual audit and review of tax collections and distributions, and verify that tax receipts are used as stipulated by this ordinance.

(3) Duties of the Board: The Board Shall:

(a) Hear and determine appeals of orders or decisions of the Tax Administrator. The Board may affirm, modify or reverse a decision or dismiss an appeal. In reviewing a decision of the Tax Administrator the Board may take evidence and make an investigation. It shall give notice of its determination in the manner prescribed for serving notice of a Tax Administrator's decision and shall file a certified copy of each determination with the Tax Administrator. A determination becomes final after ten (10) days It then becomes due, subject to interest and penalties, and enforceable by the Tax Administrator in the same manner as an order or decision of the Tax Administrator.

(b) Approve, modify or disapprove all forms, rules and regulations prescribed by the Tax Administrator if the forms, rules or regulations are challenged in the administration and enforcement of this Ordinance.

(c) Hear and determine protests made to a form, rule or regulation approved or prescribed by the Tax Administrator.

(d) Prescribe rules for extensions and for good cause, grant extensions of time in excess of one (1) month for filing a return or paying the tax.

(e) Make investigations regarding imposition and administration of the tax on matters pertaining to the tax and enforcement problems; the adoption, amendment or repeal of legislation pertaining to the tax.

(f) Recommend changes in the tax rate or distribution of tax receipts.

(g) Any other duties as otherwise set forth herein.

Section 18. TAX REVENUE DISTRIBUTION

The total net Transient Lodging Tax receipts after collection and other administrative costs shall be distributed as provided for in this Ordinance by the Wallowa County Treasurer with said distribution not to exceed the following guidelines and any unexpended revenue to be retained in the Transient Lodging Agency Fund from year to year:

(1) Twenty percent (20%) of the funds collected to the Wallowa County Health Care District Emergency Services Department; ten percent (10%) to the Wallowa County Search and Rescue Unit; five percent (5%) to the Wallowa County Solid Waste Program. Such funds disbursed by the Wallowa County Treasurer shall be used solely for supplies, maintenance, training, and operation of the Wallowa County Health Care District Emergency Services Department, the Wallowa County Search and Rescue Unit and the Wallowa County Solid Waste Program.

(2) Fifteen percent (15%) to tourism, recreation, economic development, city or county park, or other worthy County projects as recommended by the Board

(3) Fifty percent (50%) to the Wallowa County Chamber of Commerce of which at least fifty percent (50%) of such funds will be budgeted annually by the Chamber for tourism and business development promotion within Wallowa County.

Section 19. APPEALS

Any person aggrieved by any provision of the Tax Administrator may appeal to the Board by filing a notice of appeal with the Tax Administrator within ten (10) days of the Administrator's decision. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the Board who shall fix a time and place for hearing such appeal. The Board shall give the appellant not less than ten (10) days written notice of the time and place of the hearing of said appealed matter..

Section 20. SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional (or otherwise invalid), such decisions shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The legislative body hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional (or otherwise invalid).

Section 21. VIOLATIONS

It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental

return or other data required by the Tax Administrator or to render a false or fraudulent return, No person required to make, render, sign, or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due required by this Ordinance. Any person willfully violating any of the provisions of this Ordinance shall be subject to a fine of not more than Two Hundred Fifty Dollars (\$250.00).

Section 22. EFFECTIVE DATE

This Ordinance having been approved April 5, 2004, and shall take effect on July 2, 2004.

DONE AND DATED THIS 5th day of April, 2004.

WALLOWA COUNTY BOARD OF COMMISSIONERS

1. MIKE HAYWARD, CHAIRMAN
2. DAN R. DEBOIE, COMMISSIONER
3. BEN BOSWELL, COMMISSIONER