

***Chapter 69.07 HOTEL-MOTEL ROOM TAX<sup>1</sup>***

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<sup>1</sup>Cross reference(s)—Interest on moneys due, CBJ Code ch. 01.41; hotels, CBJ Code ch. 20.10.

State law reference(s)—General taxation authority, AS 29.35.010(6).

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## 69.07.010 Definitions.

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

*Hosting platform*: Any person or entity who, for a fee, provides a means through which a transient may book a suite, room or rooms in a hotel-motel, regardless of whether payment is transferred through or processed by such platform.

*Guest* means an individual, corporation, partnership or association paying monetary or other consideration for the use of a sleeping room or rooms in a hotel-motel.

*Hotel-motel* means a structure, or portions of a structure, occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes and includes any hotel, motel, inn or similar structure.

*Operator* means a person, firm, corporation or other legal entity who furnishes, offers for rent or otherwise makes available in the City and Borough rooms in a hotel-motel for monetary or other consideration, whether acting directly or through an agent or employee.

*Person* means an individual natural person.

*Rent* and *rents* mean the amount paid or promised, in terms of money, as consideration for the use by a transient of a room in a hotel, motel or other place of public accommodation.

*Transient* means a person who occupies or rents a suite, room or rooms in a hotel-motel for fewer than 30 consecutive days for the purpose of habitation.

(Serial No. 80-36, § 3, 1980)

Cross reference(s)—Definitions generally, CBJ Code § 01.15.010.

State law reference(s)—"Hotel or boardinghouse" defined, AS 08.56.070(2).

## 69.07.020 Imposition of hotel-motel room rental tax.

- (a) The City and Borough hereby levies a tax on hotel-motel room rentals for transients equal to nine percent of the room rent from January 1, 2020, to December 31, 2034. The tax imposed under this chapter shall automatically return to seven percent on January 1, 2035. The tax shall be applicable to all room rentals for transients unless the rental is specifically exempted from taxation by constitution or other valid law.
- (b) Each guest is responsible for the room rental tax imposed by this chapter and the tax shall be due and payable at the time the rent is paid. The tax shall apply to all rentals where the guest or transient indicates that the room will be occupied by the transient for less than 30 days. Room rentals for transients which continue for 30 or more consecutive days shall not be taxable for rentals on and after the 30th consecutive day. Rentals which are less than 30 consecutive days shall be subject to the tax even if the room or rooms were originally taken with the intent to use or occupy for 30 or more consecutive days. Any unpaid tax shall be due and payable when the transient ceases to occupy or use space in the hotel-motel.
- (c) Every hotel-motel operator or hosting platform renting rooms subject to taxation under this chapter shall collect the taxes imposed by this chapter from the transient guest at the time of collection of the charge for the room and shall transmit the same quarterly to the City and Borough. The tax imposed shall be shown on the billing to the guest as a separate and distinct item.
- (d) The tax imposed under this chapter shall not be levied on any sales or use tax levied under chapter 69.05 nor shall the tax imposed under chapter 69.05 be levied on the tax levied under this chapter.

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(Serial No. 80-36, § 3, 1980; Serial No. 80-57, §§ 2, 3, 1981; Serial No. 84-34, § 2, 1984; Serial No. 88-17, § 2, 1988; Serial No. 2019-36, § 2, 8-19-2019, eff. 1-1-2020)

State law reference(s)—"Hotel or boardinghouse" defined, AS 08.56.070.

### **69.07.035 Exemption for nonprofit organizations.**

The tax imposed under this chapter shall not be levied on transient room rentals to a buyer or made by a seller organized and administered solely by an exempt organization that has obtained a 501(c)3 or 501(c)4 exemption certificate from the Internal Revenue Service and an exemption certificate from the sales tax administrator.

(Serial No. 83-80, § 2, 1985)

### **69.07.040 Operator to add tax to rent.**

Every operator shall add the amount of the tax levied by this chapter to the rent and the tax shall be stated separately on any sales receipts or slips, rent receipts, charge tickets, invoices, statements of account or other tangible evidence of the rental.

(Serial No. 80-36, § 3, 1980)

### **69.07.045 Monthly remittance of estimated hotel-motel tax.**

- (a) *Monthly deposit report.* Every hotel-motel operator **or hosting platform** who incurs hotel-motel tax liability or a combined sales tax and hotel-motel tax liability, as levied under chapter 69.05 or this chapter, of \$1,000.00 or more in the month shall, on or before the 15th day of the month following the month in which the tax liability was incurred, complete a monthly deposit report declaring estimated hotel-motel tax liability and, if applicable, sales tax liability for the month and transmit the report to the City and Borough. If the 15th day is a Saturday, Sunday or federal, state or City and Borough holiday, the due date will be extended until the next business day. The United States Postal Service postmark shall determine the date of filing for mailed reports.
- (b) *Amount of monthly remittance.* At the time of transmitting the monthly deposit report, the operator **or hosting platform** shall remit to the City and Borough the total estimated amount of hotel-motel and, if applicable, sales tax due for the month for which the deposit report is filed.
- (c) *Penalties.* A late filing penalty of \$25.00 shall be added to all late-filed monthly deposit reports. In addition, late payment penalties will be assessed on monthly tax deposits when the operator **or hosting platform** fails to remit at least 80 percent of the total monthly hotel-motel tax and sales tax deposit due on or before the 15th day of the month following the month for which the deposit is required. The late payment penalty will be equal to one percent per month or fraction thereof of the total delinquent monthly deposit balance due. The delinquent amount shall be the difference between the total tax deposit due for the month and the amount of the deposit remitted by the seller. The delinquent monthly payment penalty will be assessed on the 16th day of each month or fraction of a month from the date of delinquency to the date of total payment or the due date of the hotel-motel tax return covering the monthly payment period, whichever is earlier.
- (d) *Funding period adjustments.* In addition to the monthly deposit and reporting requirements set forth in subsections (a) and (b) of this section, operators **or hosting platforms** are required to file period returns and remit the remaining unpaid hotel-motel tax due as required in subsections 69.07.050(a) or 69.07.080(c). If the hotel-motel tax due and payable by the operator **or hosting platform**, as required in section 69.07.050, is less than the total amount of the monthly hotel-motel tax deposits remitted to the City and Borough during that filing period, the excess balance will be applied to the operator's **or hosting platform's** next monthly

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hotel-motel tax deposit, unless the operator **or hosting platform** elects in writing to have the balance refunded.

(Serial No. 91-35am, § 2, 1991)

#### **69.07.050 Period returns, penalties and interest for delinquency.**

- (a) Every operator **or hosting platform** shall on or before the last day of the month, unless the last day of the month is a Saturday, Sunday, or federal, state or City and Borough holiday in which case the due date will be extended until the next business day, immediately following the end of each filing period complete a return for the required filing period setting forth the total of all hotel-motel mom rentals, regardless of whether such transactions are taxable or nontaxable, the amount of hotel-motel tax due, and such other information as the City and Borough may require, and sign and deliver or mail the same to the City and Borough manager's office. Period returns shall be filed for the calendar quarters ending on March 31, June 30, September 30, and December 31 unless the seller is allowed or directed by the City and Borough manager to file for a different time period as authorized in subsection 69.07.080(c)
- (b) The tax levied under this chapter, whether or not collected from the buyer, except for credit transactions covered in subsection (c) of this section, must be remitted by the seller to the City and Borough at the time of transmitting the return, and if not so remitted or if the return is not timely filed, such tax is delinquent. A late filing penalty of \$25.00 shall be added to all late returns. The postmark shall determine the date of filing mailed returns. In addition, a late payment penalty of five percent per month or any fraction thereof, until a total late payment penalty of 25 percent has accrued, shall be added to all returns until such tax, penalty and interest thereon have been paid. Such penalty shall be assessed and collected in the same manner as the tax is assessed and collected. In addition to these penalties, interest at a rate of 15 percent per year on the delinquent tax from the date of delinquency until paid shall accrue and be collected in the same manner the delinquent tax is collected.
- (c) The operator **or hosting platform** shall report and pay over the tax to the City and Borough on the same basis, cash or accrual, the seller uses for reporting federal income tax. An operator **or hosting platform** reporting on the accrual basis shall be allowed a tax credit for tax previously paid by the operator or hosting platform on any rental made on credit to the extent the operator **or hosting platform** declares such debt to be uncollectible and a bad debt for federal income tax purposes. Such bad debt credit must be claimed on a timely filed quarterly tax report covering the quarter during which the operator **or hosting platform** declares the transaction a bad debt for federal income tax purposes.

(Serial No. 80-36, § 3, 1980; Serial No. 85-12, § 2, 1985; Serial No. 91-35am, § 3, 1991)

#### **69.07.060 Reserved.**

Editor's note(s)—Serial No. 2021-29(b), § 3, adopted September 13, 2021, and effective October 14, 2021, amended the Code by repealing former 69.70.060, which pertained to operator's compensatory collection discount, and derived from Serial No. 80-36 of 1980; Serial No. 91-35am of 1991; and Serial No. 2010-19, adopted June 28, 2010.

#### **69.07.070 Assessment limitation periods; recordkeeping.**

- (a) The amount of any tax imposed under this chapter may be determined and assessed for a period of three years after the date the return was filed with the City and Borough manager's office. No civil action for the collection of such tax may be commenced after the expiration of the three-year period except an action for taxes, penalties and interest due for those return periods that are the subject of a written demand or assessment made under section 69.07.080 within the three-year period, unless the operator waives the protection of this section.

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- (b) In order to facilitate the administration and enforcement of the provisions of this chapter, each operator shall maintain and keep for a period of three years after the date of filing all of the period hotel-motel tax reports, forms and other records prescribed by this chapter or as prescribed by the manager or the manager's designee. The manager is specifically authorized and empowered to examine and inspect at all reasonable hours the books, records and other documents of any operator in order to carry out the provisions of this chapter.

(Serial No. 80-36, § 3, 1980; Serial No. 91-35am, § 5, 1991)

#### **69.07.080 Delinquency failure to submit return.**

- (a) Whenever any operator **or hosting platform** has become delinquent in the submission of the required filing period return for a period of 30 days, the manager shall make written demand by certified mail, return receipt requested, upon the delinquent operator **or hosting platform** for submission of the required hotel-motel tax return within ten days. In the event of noncompliance with such demand, the City and Borough manager shall make a hotel-motel tax assessment against the delinquent operator **or hosting platform**, the assessment to be based on an estimate of the gross transient rental revenue received by the operator **or hosting platform** during the filing period in question and such assessment shall be referred to the City and Borough collector and the City and Borough attorney for appropriate action to recover such tax.
- (b) Whenever any operator **or hosting platform** fails to submit the required filing period return after notice given as provided in subsection (a) of this section, or such return is reasonably believed by the manager to contain incorrect reporting, the manager may notify such operator **or hosting platform** in writing by certified mail, return receipt requested, that a hearing will be held upon the matter at a specified place and time, which shall not be less than 15 days after the date of the notice. The operator **or hosting platform** shall be present at the hearing and make available to the manager for inspection the operator's **or hosting platform's** books, papers, records and other memoranda pertaining to gross transient rental revenue required to make a determination of tax liability, if any. In the event of noncompliance by the operator **or hosting platform**, the manager may take such legal action, civil or criminal, or both, as provided for in this chapter or the civil or criminal statutes of the state, or both.
- (c) Whenever any operator fails to submit the required filing period return after notice given as provided in subsection (a) of this section, the manager may require such operator to submit returns and remit taxes on a monthly or more frequent basis.

(Serial No. 80-36, § 3, 1980; Serial No. 91-35am, § 6, 1991)

#### **69.07.090 Suits for collection.**

Taxes due but not paid or taxes collected but not transmitted may be recovered in an action at law against the transient guest or the hotel-motel operator. Tax returns shall be prima facie proof of taxes collected but not transmitted.

(Serial No. 80-36, § 3, 1980)

#### **69.07.100 Prohibited acts.**

- (a) No person may fail or refuse to pay the tax imposed by this chapter when it is due and payable to an operator **or hosting platform** authorized to collect the tax.
- (b) No operator **or hosting platform** may fail or refuse to make the quarterly returns required by this chapter.
- (c) No operator **or hosting platform** may fail or refuse to pay to the City and Borough in the manner provided in this chapter the tax imposed under this chapter.

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- (d) No operator may advertise or state to the public or to any guest or renter, directly or indirectly, that the tax or any part of it will be assumed or absorbed by the operator or the hotel-motel, or that the tax will not be added to the rental, or that it will be refunded, nor may an operator absorb or fail to add the tax or any part of it or refund any tax, or fail to separately state the tax to the renter or guest.

(Serial No. 80-36, § 3, 1980)

#### **69.07.110 Violations a misdemeanor.**

Any person, firm, copartnership or corporation violating any of the provisions of this chapter is guilty of a misdemeanor.

(Serial No. 80-36, § 3, 1980)

#### **69.07.120 Inspection of business license.**

Each operator who exercises the taxable privilege of engaging in the hotel or motel business within the City and Borough consents to the inspection of his or her state business license in order to facilitate the operator's accomplishment of the provisions and objectives of this chapter.

(Serial No. 80-36, § 3, 1980)

#### **69.07.130 Sale of business; final tax return; liability of purchaser.**

If any operator sells out the operator's hotel or motel business to another operator, the operator shall make a final tax return within 15 days after the date of selling the business and the purchaser, successor, successors or assigns shall withhold a sufficient portion of the purchase money to safely cover the amount of such taxes, penalties and interest as may be due and unpaid to the City and Borough, showing that all tax obligations imposed by this chapter have been paid; and further provided, if any purchaser of a business fails to withhold from the purchase, money as provided in this section, the purchaser shall be personally liable for the payment of the taxes, penalties and interest accruing and unpaid to the City and Borough on account of the operation of the business by any former owner, owners or assigns.

(Serial No. 80-36, § 3, 1980)

#### **69.07.140 Lien for tax, interest and penalty due.**

The tax, interest and penalty imposed under this chapter shall constitute a lien in favor of the City and Borough upon the assets or property of every person engaging in the hotel or motel business within the City and Borough. The lien arises upon delinquency and continues until liability for the amount is satisfied or the property of the delinquent person is sold at a hotel-motel tax lien foreclosure sale. The lien is not valid as against a mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien is filed in the office of the recorder for the City and Borough recording district in the manner provided for federal tax liens in AS 43.10.090—43.10.150. After such filing, it shall be superior to all other liens except those for property taxes and special assessments.

(Serial No. 80-36, § 3, 1980)