

## **Chapter 3.50**

### **HOTEL ROOM TAX**

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#### **3.50.010 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:

*Clerk/Treasurer* means the City of McGrath Clerk/Treasurer or designee.

*Direct Pay* means a guest pays for room rent through an exempt employer's credit card, invoice or other means paid directly by that employer.

*Exempt* means a direct-pay guest on official business of tribe, local municipality, state government, federal government, school district or foreign diplomats holding a tax exemption card issued by the U.S. State Department.

*Guest* means an individual, corporation, partnership or association paying monetary or other consideration for the use of all or part of a room or rooms in a hotel, motel, bed & breakfast, lodge, inn, bunkhouse or other public facility.

*Hotel* 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, bed & breakfast, lodge, inn, bunkhouse, public facility 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 all or part of rooms for transient occupancy in a hotel, motel, bed & breakfast, lodge, inn, bunkhouse or public facility 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 or in-kind barter, as consideration for the use by a transient, all or part of a room in a hotel, motel, bed & breakfast, lodge, inn, bunkhouse or other place of public accommodation.

*Transient* means a person who occupies or rents all or part of a suite, room or rooms in a hotel/motel, bed & breakfast, lodge, inn, bunkhouse or public facility for fewer than 30 consecutive days for the purpose of habitation. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

**State law references:** "Hotel or boardinghouse" defined, AS 08.56.070(2).

**3.50.020 Imposition of hotel room rental tax.**

(a) The city hereby levies a tax on hotel room rentals for transients equal to and not to exceed without the approval of the voters, ten-percent (10%) of the room rent. The tax shall be applicable to all room rentals for transients unless the rental is specifically exempted from tax or taxes 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 room rentals. Room rentals for transients which continue for 30 or more consecutive days shall not have taxes levied for rentals on and after the 30th consecutive day and shall have all previously collected tax reimbursed on the 31<sup>st</sup> 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.

(c) Every hotel operator renting rooms subject to a tax 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 monthly to the city. The tax imposed shall be shown on the billing to the guest as a separate and distinct item and shall be for the room only.

(d) The tax imposed under this chapter shall not be levied on any future sales or use tax nor shall any future sales or use tax be levied on the tax levied under this chapter. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

**State law references:** "Hotel or boardinghouse" defined, AS 08.56.070.

**3.50.030 Exemption for a municipality, state or United States government.**

(a) Gross receipts from the rental of a hotel or motel room deriving from transactions in the following categories shall be exempt from the hotel room tax upon presentation by the buyer of a valid exemption certificate and reasonable identification.

(1) Rentals paid or billed directly to a tribe, municipality, a state, the United States federal government or foreign diplomats holding a tax exemption card issued by the U.S. State Department. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

**3.50.040 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. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

**3.50.050 Monthly remittance of estimated hotel tax.**

(a) Every hotel operator who incurs a hotel tax liability shall, on or before the 15th day of the month following the month in which the tax liability was incurred, complete a monthly room tax return declaring hotel tax liability for the month and transmit the report to the city. If the 15th day is a Saturday, Sunday or federal, state or city 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 Transient room tax remittance. At the time of transmitting the monthly room tax return, the operator shall remit to the city the total amount of hotel tax due for the month for which the tax is filed. (Ord. 14-01 (part) 2014)

**3.50.060 Monthly tax return penalties and interest for delinquency.**

**Penalties**

(a) A failure to file penalty of \$25.00 shall be incurred automatically when an operator fails to file a tax return within 7 days following the due date, even if the sales are zero. If an operator fails to file the tax due within sixteen calendar days following the due date, the penalty shall be increased automatically to 25% of the tax due.

(b) A failure to pay penalty will be assessed on monthly tax returns when the operator fails to pay the full amount of the tax due within seven calendar days following the due date. The late payment penalty will be equal to one percent (1%) per month and be incurred automatically. If an operator fails to pay the full amount of the tax due within sixteen calendar days following the due date, the penalty shall be increased automatically to twenty-five percent (25%). (Ord. 05-04, 2004)

(c) Interest at the rate of ten-percent (10%) per annum shall accrue on the unremitted balance of taxes due from the operator.

(d) The operator shall report and pay the tax to the city on the same basis, cash or accrual, the seller uses for reporting federal income tax. An operator reporting on the accrual basis shall be allowed a tax credit for taxes previously paid by the operator on any rental made on credit to the extent the operator 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 tax report covering the month during which the operator declares the transaction a bad debt for federal income tax purposes. (Ord. 14-01 (part) 2014) ((Prior Code 05-04, 2004)

**3.50.070 Operator's compensatory collection discount.**

All operators rendering hotel tax returns to the city shall be allowed to compensate themselves for costs incurred in the collection, record-keeping, remittance and accounting for the tax imposed by taking a one percent tax collection discount to reduce the tax to be remitted on any monthly return that is timely filed with a remittance of all hotel tax due. The full amount due shall be shown and a one percent deduction taken on the return form. The deduction may not be

taken if any hotel tax, penalty or interest is due for any previous filing period. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

**3.50.080 Assessment limitation periods; recordkeeping; provision for audit.**

(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 clerk/treasurer clerk/treasurer'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 within the three-year period, unless the operator waives the protection of this section.

(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 monthly hotel tax reports, forms and other records prescribed by this chapter or as prescribed by the clerk/treasurer or the clerk/treasurer's designee. During any three year period, the clerk/treasurer is specifically authorized and empowered to have the books, records and other documents of any operator audited in order to carry out the provisions of this chapter. (Ord. 05-04, 2004)

(c) Any operator who is required to collect and remit a transient room tax, or who is required to submit a transient room tax return under the provisions of Title 3 Chapter 350 of the McGrath Municipal Code is subject to a discretionary transient room tax audit at any time. The purpose of such an audit is to examine the business records of the operator in order to determine whether appropriate amounts of transient room tax revenue have been collected by the operator and remitted to the municipality.

(d) The city clerk/clerk/treasurer shall be responsible for directing that transient room tax audits take place and for identifying the particular operators whose business records will be audited.

(e) Transient room tax audits of operator's business records may be accomplished by either an employee of the city or by an individual or firm under contract with the municipality.

(f) Operators selected for a transient room tax audit will be notified by letter and will be required to meet with, and make available for inspection and copying all pertinent business records including income tax returns that may be requested for the prior three fiscal years for examination, to the clerk/clerk/treasurer, city employee, or contractor conducting the audit, within thirty days of notification. Under extenuating circumstances, the clerk/treasurer may grant an extension of time for compliance at the clerk/treasurer's discretion.

(g) After completion of a transient room tax audit, operators subject to the audit will be notified of the results of the audit by letter. If the audit has resulted in an additional transient room tax liability to the municipality, the additional transient room tax must be remitted to the municipality within fourteen days after the receipt of the letter, or the additional transient room tax will be considered delinquent and subject to the procedures on delinquencies outlined in Section 350.060. If the audit has resulted in a refund due the operator, the refund will be made to the operator within fourteen days, or applied to the operator's account, at the operator's option.

(h) It shall be the operator's responsibility to maintain business records in sufficient detail to substantiate all information reported on transient room tax returns, including rentals qualifying as exempt from taxation under the provisions of Section 350.030. If insufficient detail exists within an operator's business records to substantiate rental exemptions, such rentals may be reclassified

as taxable rentals at the auditor's discretion and subject to transient room tax collection and remittance.

(i) Any operator notified of an additional transient room tax liability as a result of a transient room tax audit shall have the right to appeal the additional liability to the assembly. Such an appeal must be filed with the municipal clerk/clerk/treasurer within thirty days of notification by letter of the liability. If an additional liability is appealed, the accumulation of penalties and interest under the provisions of Section 350.050 will be suspended on the date the appeal is filed with the municipal clerk/clerk/treasurer; if the appeal is subsequently denied by the assembly, all such penalties and interest will be retroactive back to the original date of notification of additional liability by letter.

(j) Any operator refusing to comply with the provisions of this section shall be subject to any or all of the procedures on delinquencies as outlined including the filing of a criminal complaint against the operator in district court.

(k) All business records will be returned to the business after the audit is completed and all copies will be destroyed no later than five years after the audit.

(l) Any (3) consecutive months that taxes have not been filed and paid will trigger an audit. (Ord. 14-01 (part) 2014)

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

(a) Whenever any operator has become delinquent in the submission of the required monthly return for a period of 30 days, the clerk/treasurer shall make written demand by certified mail, return receipt requested, upon the delinquent operator for submission of the required hotel tax return within ten days. In the event of noncompliance with such demand, the city clerk/treasurer shall make a hotel tax assessment against the delinquent operator, the assessment to be based on an estimate of the gross transient rental revenue received by the operator during the filing period in question and such assessment shall be referred by the city clerk/treasurer and to the city attorney for appropriate action to recover such tax.

(b) Whenever any operator fails to submit the required monthly return after notice given as provided in subsection (a) of this section, or such return is reasonably believed by the clerk/treasurer to contain incorrect reporting, the clerk/treasurer may notify such operator 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 shall be present at the hearing and make available to the clerk/treasurer for inspection the operator'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, the clerk/treasurer 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. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

### **3.50.100 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 operator. Tax returns shall be prima facie proof of taxes collected but not transmitted. (Ord. 14-01 (part) 2014 (Prior Code 05-04, 2004)

### **3.50.110 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 authorized to collect the tax.
- (b) No operator may fail or refuse to make the monthly returns required by this chapter.
- (c) No operator may fail or refuse to pay to the city in the manner provided in this chapter the tax imposed under this chapter.
- (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. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

**3.50.120 Violations a misdemeanor.**

Any person, firm, co-partnership or corporation violating any of the provisions of this chapter is guilty of a misdemeanor. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

**3.50.130 Inspection of business license.**

Each operator who exercises the chargeable privilege of engaging in the hotel or motel business within the city 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. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

**3.50.140 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, 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 on account of the operation of the business by any former owner, owners or assigns. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

**3.50.150 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 upon the assets or property of every person engaging in the hotel or motel business within the city. 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 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 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 taxes. (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

**3.50.160 Confidential and non-confidential tax information.**

- (a) The following information is publicly available information:

1. Names and addresses of business owners who filed tax returns under this chapter;
  2. Whether a business is current in filing tax returns and in remitting tax due under this chapter, and the number of returns not filed; and
- (b) The city of McGrath may permit any authorized representative of any federal, state or other local government agency to inspect and copy any tax returns filed and reports prepared under this chapter, if the other governmental agency provides substantially similar access to the city of McGrath and if the city of McGrath determines that other governmental agency provides adequate safeguards for the confidentiality of the tax returns and reports.
- (c) Except as otherwise provided in this section, room tax forms and their contents shall be confidential and shall not be disclosed by the clerk/treasurer except:
1. In connection with efforts by the city McGrath to collect the tax;
  2. in response to a subpoena issued by a court, state agency or governmental board or commission;
  3. In connection with legislative inquiry specifically authorized by the council;
  4. In connection with the city of McGrath audits for purposes of verifying city of McGrath accounting practices;
- (Ord. 14-01 (part) 2014) (Prior Code 05-04, 2004)

