

LODGING TAX

§ 35.080 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The City of Proctor, Minnesota, acting by or through its City Council.

LODGER. The person obtaining lodging from an operator.

LODGING. The furnishing for a consideration of lodging at a hotel, motel, apartment, tourist court, municipal campground, bed and breakfast or resort, other than the renting or leasing of a premises for a continuous period of 30 days or more to the same occupant. The furnishing of rooms owned by religious, educational or non-profit organizations for self-sponsored activities shall not constitute **LODGING** for purposes of this chapter.

OPERATOR. Any person who has charge, care or control of a building in the city, or part thereof, in which dwelling units or rooming units are let, whether in the capacity of owner, lessee, sublessee, licensee or any other capacity.

PERSON. Includes all firms, partnerships, associations, corporations and natural persons.

RENT. The total consideration valued in money charged for lodging, whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.

(Prior Code, § 1100.01)

§ 35.081 IMPOSITION OF TAX.

Pursuant to M.S. § 469.190, as it may be amended from time to time, there is hereby imposed a tax of 3% on the rent charged by an operator for providing lodging to any person. The tax shall be stated and charged separately and shall be collected by the operator from the lodger. The tax collected by the operator shall be a debt owed by the operator to the city and shall be extinguished only by payment to the city. In no case shall the tax imposed by this subchapter upon an operator exceed the amount of tax which the operator is authorized and required by this subchapter to collect from a lodger.

(Prior Code, § 1100.02) (Ord. 04-11, passed 11-21-2011)

§ 35.082 COLLECTIONS.

Each operator shall collect the tax imposed by this subchapter at the time the rent is paid. The tax collection shall be deemed to be held in trust by the operator for the

city. The amount of tax shall be separately stated from the rent charged for the lodging, and those persons paying the tax shall receive a receipt of payment from the operator. (Prior Code, § 1100.03) Penalty, see § 35.999

§ 35.083 EXEMPTIONS.

An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the city to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected, and a claim shall be made in writing and under penalty of perjury on forms provided by the city. All claims shall be forwarded to the city when the returns and collections are submitted as required by this subchapter.

(Prior Code, § 1100.04)

§ 35.084 ADVERTISING NO TAX.

It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than \$0.01 shall be considered an additional cent.

(Prior Code, § 1100.05) Penalty, see § 35.999

§ 35.085 PAYMENTS AND RETURNS.

(A) The taxes imposed by this subchapter shall be paid by the operator to the city monthly not later than 20 days after the end of the month in which the taxes were collected. At the time of payment, the operator shall submit a return upon forms and containing information as the city may require.

(B) The return shall contain the following minimum information:

- (1) The total amount of rent collected for lodging during the period covered by the return;
- (2) The total amount of exceptions/exemptions;
- (3) The amount of tax required to be collected and due for the period;
- (4) The signature of the person filing the return or that of his or her agent duly authorized in writing;
- (5) The period covered by the return;
- (6) The amount of uncollectible rental charges subject to the lodging tax; and
- (7) A certification of accuracy attested to by the person signing the form for submission to the city.

(C) The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this subchapter previously paid as a result of any transaction the consideration for which became uncollectible.
(Prior Code, § 1100.06)

§ 35.086 EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS.

The city or its duly authorized representatives shall, after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed and the basis of the examination shall be the tax to be paid. If the tax due is found to be greater than that paid, the excess shall be paid to the city within ten days after receipt of a notice thereof given either personally or sent by certified mail, return receipt requested, to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the city within ten working days after determination of the refund.
(Prior Code, § 1100.07)

§ 35.087 REFUNDS.

Any person may apply to the city for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one year from the date the return was due to be filed. The city shall examine the claim and make and file written findings denying or allowing the claim in whole or in part and shall mail a notice thereof by certified mail, return receipt requested, to the person at the address stated upon the return. If the claim is allowed in whole or in part, the city shall credit the amount of the allowance against any taxes due under this subchapter from the claimant and the balance of the allowance, if any, shall be paid by the city to the claimant.
(Prior Code, § 1100.08)

§ 35.088 FAILURE TO FILE A RETURN.

(A) (1) If any operator required by this subchapter to file a return shall fail to do so within the time prescribed or shall make, willfully or otherwise, an incorrect, false or fraudulent return, the operator shall, upon written notice and demand, file the return or corrected return within five days of receipt of the notice and shall at the same time pay any tax due on the basis thereof. If the person shall fail to file the return or corrected return, the entity shall make a return or corrected return for the person based upon the knowledge or information as the city can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by the return) shall be paid within five days of the receipt of written notice and demand for the payment.

(2) Any return or assessment made by the city shall be prima facie correct and valid, and the burden of proving to the contrary rests with any person in any action or proceeding in respect thereto.

(B) If any portion of a tax imposed by this subchapter, including penalties thereon, is not paid within 30 days after it is required to be paid, the city may institute a legal action as it, in its sole discretion, may deem appropriate to cover the amount due plus interest penalties, the costs and disbursements of any action.

(C) Upon a showing of good cause, the city may grant an operator one 30-day extension of time within which to file a return and make payment of taxes as required by the subchapter provided that interest during the period of extension shall be added to the taxes due at the rate of 8% per annum.

(Prior Code, § 1100.09)

§ 35.089 ADMINISTRATION OF TAX.

The city shall administer and enforce the assessment and collection of the taxes imposed by this subchapter. The city shall cause to be prepared blank forms for the returns and other documents required by this subchapter and shall distribute the same throughout the city. Failure to receive or secure forms and documents shall not relieve any person from any obligation required of him or her under this subchapter.

(Prior Code, § 1100.11)

§ 35.090 EXAMINE RECORDS.

Persons acting on behalf of the city and authorized in writing by the city may examine the books, papers and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this subchapter. Every operator is directed and required to give to the city the means, facilities and opportunity during regular city business hours for the examinations and investigations as are hereby authorized.

(Prior Code, § 1100.12)

§ 35.091 VIOLATIONS.

Any person who shall willfully fail to make a return by this subchapter or who shall fail to remit the taxes collected or any penalty or interest imposed by this subchapter after written demand for the payment or who shall refuse to permit the city's authorized agents to examine the books, records and papers under his or her control or who shall willfully make any incomplete, false or fraudulent return shall be guilty of a misdemeanor.

(Prior Code, § 1100.13) Penalty, see § 35.999

§ 35.092 USE OF PROCEEDS.

Ninety-five percent of the proceeds obtained from the collection of taxes pursuant to this subchapter shall be used in accordance with M.S. § 469.190, as it may be amended from time to time, for the purpose of marketing and promoting the city as a tourist center. The city shall retain up to 5% of the proceeds obtained hereunder to defray the costs and expenses of collection and administration of the tax.
(Prior Code, § 1100.14)

§ 35.093 APPEALS.

(A) Any operator aggrieved by any notice, order or determination made by the city under this subchapter may file a petition for review of the notice, order or determination. The petition shall contain the name of petitioner, the petitioner's address and the location of the lodging subject to the notice, order or determination.

(B) The petition for review shall be filed with the city within ten days after the notice, order or determination for which review is sought has been mailed to or served upon the person requesting review.

(C) Upon receipt of the petition, the City Administrator shall set a date for a hearing and give the petitioner at least five days' prior written notice of the date, time and place of the hearing.

(D) At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn.

(E) The hearing shall be conducted by the City Council or its authorized representative, and it shall make written findings of fact and conclusions based upon the applicable section of this subchapter and the evidence presented. The City Council or its authorized representative may affirm, reverse or modify the notice, order or determination which is subject of the appeal.

(Prior Code, § 1100.15)

§ 35.094 TERM.

The three-year term of this subchapter shall begin on its effective date and shall automatically be extended for subsequent three-year periods unless it is rescinded by City Council action.

(Prior Code, § 1100.16)

§ 35.999 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) (1) If any tax imposed by §§ 35.080 through 35.094 is not paid within the time herein specified for the payment, or an extension thereof, there shall be added thereto a specific penalty equal to 10% of the amount remaining unpaid.

(2) In case of any failure to make and file a return within the time prescribed by §§ 35.080 through 35.094 unless it is shown that the failure is not due to willful neglect, there shall be added to the tax in addition to penalty provided in division (B)(1) above, a penalty of 10% for each 30-day period or fraction thereof during which the failure continues, not exceeding 25% in the aggregate. There shall be a minimum penalty assessed of an amount set by City Council from time to time by resolution. The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

(3) If any person willfully fails to file any return or make any payment required by §§ 35.080 through 35.094 or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat any tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50% of any tax (less any amounts paid on the basis of the false or fraudulent return) found due for the period to which the return related. This penalty shall be collected as part of the tax and shall be in addition to any other penalties provided by §§ 35.080 through 35.094.

(4) All payments received shall be credited first to penalties, next to interest and then to the tax due.

(5) The amount of tax not timely paid, together with any penalty provided by §§ 35.080 through 35.094, shall bear interest at the rate of 10% per annum from the time the tax should have been paid until payment is made. Any interest and penalty shall be added to the tax and be collected as part thereof.

(Prior Code, § 1100.10)