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COUNTY OF ALLEGHENY

OFFICE OF THE TREASURER
SPECIAL TAX DIVISION
ALCOHOL, VEHICLE RENTAL AND HOTEL/MOTEL

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PROMULGATIONS OF REGULATIONS # 101-110
FOR THE HOTEL ROOM RENTAL TAX OF ALLEGHENY COUNTY

Pursuant to the powers invested by Act #94 of 1977 and subsequent amendments of the General Assembly of Pennsylvania and the Hotel Room Rental Tax Ordinance of Allegheny County, I herewith promulgate Regulations #101-110 concerning the collection of the Hotel Room Rental Tax. Said regulations are subject to amendments and the promulgation of supplementary regulations.

Any inquiries and advisory opinions regarding said regulations shall be directed to the Solicitor to the Allegheny County Treasurer.

Enacted: February 7, 1978

Allegheny County Treasurer

REGULATION 101: EXEMPT ORGANIZATIONS

A. In addition to those occupants exempt by statute and ordinance, the following occupants are exempt:

1. Ambassadors, Ministers, and Consular Officers of Foreign Governments-Ambassadors, ministers, and other diplomatic representatives of foreign governments properly accredited by the United States are exempt from tax upon their occupancy of rooms. This exemption does not apply to consular officers or to officers of foreign governments other than those herein above specified, unless such exemption arises from treaties or reciprocal agreements existing between such foreign governments and the United States.

A person claiming exemption from the tax under this regulation should submit written proof that he is properly accredited by the United States. Consular officers and officials of foreign governments should submit written proof of the treaty agreement under which similar exemption is granted by their country to consular officers and officials of the United States together with proof that such treaty or reciprocal agreement is presently in effect and that they are an officer or official entitled to prerogatives there under. If exemption has already been accorded under the sales and use tax portion of the "Tax Reform Code of 1971", the numbered identification card, issued by the Commonwealth of Pennsylvania, is valid for Hotel Room Rental Tax purposes. This card must be shown by the exempt occupant to the hotel operator whenever a claim for exemption is made.

2. Occupancy of Hotel Rooms by the United States Government-Occupancy of rooms by the Government of the United States, or its agencies, or by employees or representatives of the Government of the United States or its agencies, when such occupancy is solely for official purposes and the rent is paid by the Government of the United or its agencies, is exempt from tax. Members of the Armed Forces are exempt from tax only if they are acting as authorized representatives of the Government of the United States or its agencies and such rent is paid by the Government of the United States or its agencies.
3. Occupancy of Hotel Rooms by Other Exempt Facilities-Occupancy of rooms, the charges for which are billed to and paid by the following organizations are exempt

from tax:

- a. Federal Credit Unions organized under the provisions of The "Federal Credit Union Act", Act of June 26, 1934, as amended by P.L. 96-385 dated September 22, 1959 (12 U.S.C. 1751 et. seq.).
- b. Pennsylvania Credit Unions formed and incorporated under provisions of the Credit Union Act, Act of September 20, 1961, P.L. 1548 (15 P.S. 1230 et seq.).
- c. Public Authorities created under the Municipal Authorities Act of 1935 and 1945.
- d. Co-operative Agricultural Associations required to pay corporate net income tax under the provisions of the Co-operative Agricultural Association Corporate Net Income Tax Act, Act of May 23, 1945, P.L. 893 (72 P.S. 3420-21 et seq.).
- e. Electric Co-operative Corporations formed under the Electric Co-operative Corporation Act, Act of June 21, 1937, P.L. 1969 (15 P.S. 12401 et seq.).

Charges paid by employees or other agents of these organizations are subject to the tax even though the employee or agent is reimbursed by the exempt organization.

4. Occupancy of Hotel Rooms by the Commonwealth of Pennsylvania-Occupancy of rooms by the Commonwealth of Pennsylvania or its agencies, or by an employee or representative of the Commonwealth or its agencies, when such occupancy is solely for official purposes, and the rent is paid by the Commonwealth of Pennsylvania or its agencies is exempt from tax.

This section shall not be construed to grant an exemption to any **local government be it a county or municipality**, whose Occupancy **shall be subject** to the tax.

B. Others Not Exempt

1. No person or entity other than those referred to by the preceding Sections of this Regulation are exempted

from the Hotel Room Rental Tax.

2. Religious organizations, charities, educational institutions, etc. are required to pay tax upon occupancy of hotel rooms.

C. American Red Cross

Pursuant to a Federal Court Case¹ the Court ruled that The American Red Cross was an instrument of the U. S. Government for purposes of immunity from state taxation. Although employees of the American Red Cross are not actually employees of the U. S. Government, the Court agreed that they should be treated as tax exempt entities when the occupancy is used for official purposes and provided that the Red Cross pays the applicable rent.

¹ Department of Employment, et al v. US, et al, 87 S. Ct. 464 (1966).

REGULATION 102: DEFINITIONS FOR PURPOSES OF ORDINANCE

A. ROOM-

"Room" shall mean the entire area rented by an occupant who is renting the area, inter alia for sleeping accommodations.

Example:

An individual rents a three-room suite in a hotel at the cost of \$150.00 per day for the entire suite. Only one of the rooms in the suite has sleeping accommodations in it. The tax will be imposed upon the entire \$150.00 per day charge.

B. HOTEL-

1. An establishment which has accommodations available to the General public as sleeping quarters for periods less than thirty (30) days in a "hotel" within the meaning of this definition even though the establishment may have other accommodations which are used for purposes other than sleeping quarters, and even though the establishment may have other sleeping quarters which are available only for periods of thirty (30) days or more.
2. A private organization or institution which in the ordinary course of its activities, provides sleeping accommodations for persons directly associated with it, is not a "hotel". Where, however, such an organization or institution offers or makes available sleeping accommodations to the general public for periods less than thirty (30) days, the organization or institution is considered to be operating a "hotel" with respect to all occupants.

Examples:

- a. An apartment-hotel which rents certain apartments or rooms for occupancy on a week-to-week basis (or for other periods less than thirty days) is a "hotel", even though it has other apartments or rooms leased only on a month-to-month basis (or for other periods of thirty days or more). For the purposes of registration, the entire establishment is considered a "hotel".
- b. A single building which contains both rooms used as sleeping accommodations and rooms used for other purposes may be a "hotel". Thus, where the lower floor of the building is used for rental to commercial establishments, and the upper floors are used for rental of sleeping accommodations for the public for periods of less than thirty days, the building is a "hotel" for tax purposes.
- c. A hospital, nursing home, convalescent home, mental

institution or other institution dedicated to the care and treatment of the sick under medical supervision is **not** a "hotel" even though it provides sleeping accommodations for patients, doctors, nurses, employees and other persons associated with the institution. Similarly, where a private business provides sleeping accommodations for its employees, it is not a "hotel". Where, however, an organization or institution provides accommodations for the general public, (as, for example, the providing of sleeping accommodations by a Y.M.C.A. or a health resort or spa) for periods of less than thirty days, it is operating a "hotel".

- d. A school, college, university, convent, monastery, or other educational or religious institution, which provides sleeping accommodations for the use of persons who are participating in educational or religious activities, **is not** a "hotel". For example, where a university provides sleeping accommodations to persons who are attending a conference of convention sponsored by the institution, it is not a "hotel". A public summer camp conducted by an organization enumerated above wherein the activity of such organization is carried on as an integral part of the camp life **is not** a "hotel".
- e. A private club which restricts the use of its sleeping accommodations to its own employees and members is not considered to be a "hotel" within the meaning of the hotel occupancy tax. All charges for any occupancy must be billed to club members for the organization to retain its exempt status.

Where, however, a club permits its sleeping accommodations to be used by nonmembers, and the billing for such occupancy is made to and paid by nonmembers, the club is considered to be a "hotel" and must collect tax with respect to all occupancies (other than permanent residents) including occupancies by its membership.

C. PERMANENT RESIDENT-

Under the ordinance, a permanent resident is a person who has occupied or has the right of occupancy of any room or rooms in a hotel as a patron or otherwise for a period exceeding thirty days. Therefore, the following applies to the definition of permanent resident.

- 1. After a person has occupied or had the right to occupy for thirty consecutive days, he is no longer an occupant who is subject to the Hotel Occupancy Tax. His status as a "permanent resident" is effective for the rental period during which, or at the expiration of which, the thirty consecutive days or occupancy is completed, and continues thereafter so long as his occupancy remains

continuous and uninterrupted. Thus if a person completes his thirtieth day of consecutive occupancy during, or at the expiration of, a particular rental period, he is a "permanent resident" for the entire rental period (even though during a part of the period, he has not yet established his status as a "permanent resident", however, as to any rental period prior to the particular rental period during or at the expiration of which he completed his thirtieth day. He was and remains an occupant subject to the hotel occupancy tax. See Example (a) hereinafter).

2. A "rental period" for the purposes of these regulations is a period of time during which, under and subject to the terms of the legally enforceable contract, an occupant has a continuous right to occupy a room or rooms in a hotel and is legally bound to pay rent. Therefore, a mere statement of intention to occupy, or to permit occupancy, on the part of an occupant or hotel operator, or both, does not create a "rental period" unless the period in question is the subject of a legally enforceable contract.
3. The occupancy or right of occupancy must be for thirty consecutive days. A person who merely has the right to use a room on intermittent days of the week or month cannot become a "permanent resident", even though he cumulatively occupies for more than thirty days.
4. The status of a "permanent resident" only continues so long as the occupancy or right of occupancy continues uninterrupted. A continuing occupancy loses his status as a "permanent resident" and, with respect to his next occupancy, does not resume his status as a "permanent resident" unless and until he again completes thirty consecutive days of occupancy. A transfer from one hotel to another (even though both hotels are owned by the same operator) is a break in occupancy. A mere change of rooms, however, in the same hotel is not a break in occupancy.

Examples:

- a. An individual occupies a room on a week-to-week contract. At the end of the first four weekly rental periods, he is an occupant subject to the tax and not a permanent resident, since he has not completed thirty consecutive days of

occupancy during or at the expiration of any of these weeks. At the end of the second day of the fifth week, he completes thirty consecutive days and becomes a "permanent resident". He is a "permanent resident" and not an occupant subject to the tax as of the entire fifth week and for each week thereafter during which he continues having uninterrupted right of occupancy. As to the first four weeks, however, he was and is an occupant subject to the tax.

- b. An individual occupies a room on a month-to-month contract. So long as the first monthly rental period is not the month of February, at the end of the first monthly rental period, he is a "permanent resident" and this status is applicable to the first month, and to every month thereafter during which he continues to have an uninterrupted right of occupancy. Therefore, he is never an occupant subject to the hotel occupancy tax.
- c. A student takes a room on a week-to-week basis in a rooming house. The student tells his landlady he intends to keep the room for a full semester. The student, however, has no legally enforceable right to do so and his landlady has no legally enforceable right to force him to rent the room for the entire semester. He, therefore, occupies on a weekly rental period. He is a "permanent resident" as of the fifth week. (See example a. above). At the end of the semester, the student returns to his family's home and although he tells his landlady he wishes to resume his occupancy when he returns to school, the student pays no rent for the interim period and has no right to occupy the room during that period. Since there is a break in the student's occupancy, the student has lost his status as a "permanent resident" and upon his resumption of occupancy (on the same rental period basis) he will again be considered an occupant for the first four weekly rental periods.

D. PERSON-

The word "person" for purposes of the Hotel Occupancy Tax shall include any natural person, firm, partnership, association, corporation, fiduciary or other entity. Whenever used in any provision of the Hotel Occupancy Tax

Ordinance, or regulations relative thereto, which prescribes or imposes a fine or imprisonment or both, the term "person" as applied to firm, partnership, or association shall include the members thereof, and as applied to a corporation, the officers thereof. A firm, partnership, association or corporation may be subjected as an entity to the payment of a fine.

E. CONSIDERATION-

In determining what was the consideration paid for the occupancy of the room, services and accommodations which were available to the general public as well as to the hotel occupants or residents are not deemed to accompany the use or possession of a hotel room and the charges made for such services and accommodations are not considered part of the consideration so long as such charges are separately stated and itemized. Charges for services or facilities even though offered for the exclusive use of hotel occupants are not deemed to accompany the use of the hotel room or rooms so long as said charges are separately stated and itemized. However, a lump sum is presumed to be rent, even though the lump sum may include charges for services and accommodations which if separately stated and itemized would not be considered part of the rent.

Example:

1. An individual occupies a room. While in the hotel, he has two meals in the hotel restaurant which he charges to his hotel bill. The charges are separately stated for the meals and are available to the general public who would wish to eat in the restaurant. The tax is imposed only on the charge for the room.
2. The hotel has a health club inside the hotel facility. There is a daily charge of \$5.00 for the use of the hotel health club. Only guests of the hotel are allowed to use the health club. The daily charge for use of the health club is itemized separately on the hotel bill for each day that a guest uses the health club. The charge for the health club is not part of the consideration on which the hotel occupancy tax is based.
3. A guest of the hotel receives a free breakfast of each day that he stays at the hotel. There is no separate itemization of the breakfast on his bill and it is included in a lump sum that he is charged for occupancy of the room. The entire charge for the occupancy for the room is subject to tax.

REGULATION 103: REGISTRATION

Within thirty (30) days after the effective date of the Hotel Occupancy Tax², or within thirty (30) days after commencing business, whichever is later, each operator of any hotel shall register said hotel with the County Treasurer by completing the Registration Form provided by the Treasurer.

² January 1, 1978

REGULATION 104: RETURNS OF TAX COLLECTED AND REMITTANCE OF TAX

A. Monthly Returns:

Monthly returns are required where a hotel’s occupancy tax liability for the third calendar quarter of the preceding year amounted to \$400.00 or more. Only those establishments whose total room units are equal to or are greater than fifteen (15) room units will be subject to monthly returns. Where monthly returns are filed, no quarterly returns are necessary.

Due dates for monthly returns are as follows:

<u>Month</u>	<u>Due Dates</u>	<u>Month</u>	<u>Due Dates</u>
January	February 20	July	August 20
February	March 20	August	September 20
March	April 20	September	October 20
April	May 20	October	November 20
May	June 20	November	December 20
June	July 20	December	January 20

B. Quarterly Returns:

Hotel operators who qualify under the conditions set forth in subparagraph (A) to file only quarterly returns shall file said quarterly returns as follows:

<u>Quarter Ending</u>	<u>Due Dates</u>
March 31	April 20
June 30	July 20
September 30	October 20
December 31	January 20

C. Fee

Every hotel operator shall remit with each return filed, be it a monthly return or a quarterly return, the amount of tax shown to be due and owing on said return.

**REGULATION 105: FAILURE TO COLLECT AND REPORT TAX,
DETERMINATION OF TAX BY COUNTY TREASURER**

If any hotel operator shall fail or refuse to collect the Hotel Occupancy Tax or to make, within the time provided, under these regulations any report and remittance of said tax or any portion thereof required by the Hotel Occupancy Tax Ordinance or the regulations relative thereto, the County Treasurer shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the County Treasurer shall procure such tax and information as he is able to obtain upon which to base the assessment of any tax imposed by the Ordinance and payable by any hotel operator who has failed or refused to collect the same and to make such report and remittance, the County Treasurer shall proceed to determine and assess against such operator the tax and penalties provided for by the Ordinance as well as lawful interest. In the event such determination is made, the County Treasurer shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States Mail, postage prepaid, addressed to the operator so assessed at his last known place of business. Such operator may within ten (10) days after the serving or mailing of said notice make application in writing to the County Treasurer for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the County Treasurer shall become final and conclusive and immediately due and payable. If such application is made, the Treasurer shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the Treasurer shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner proscribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after thirty (30) days unless an appeal is taken as provided for in regulation 106.

REGULATION 106: APPEAL

Any hotel operator aggrieved by any decision by the County Treasurer with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Court of Common Pleas by filing a Notice of Appeal with the County Treasurer within thirty (30) days of the serving or mailing of the determination of tax due.

REGULATION 107: RECORDS
AMENDED AS OF SEPTEMBER 17, 1987

- A. It is presumed that all rooms are subject to the tax until the contrary is established by accurate records from the operator. The burden of proving that the rent or occupancy received is not taxable is upon the operator and the operator must demonstrate same through accurate records. In any case where a hotel operator fails to maintain adequate records as required under these Regulations, any room for which there is not adequate records shall be deemed to have been occupied for the entire period for which the supporting records are lacking.

- B. It shall be the duty of every operator liable for the collection and payment to the County of any tax imposed by the Hotel Occupancy Tax Ordinance to keep and preserve for a period of three (3) years, all records as may be necessary to determine the amount of such tax which the operator was liable to collect and pay to the County. Said records shall be maintained at the place of business where the subject rooms were rented. Said records shall include but not be limited to folios; lease agreements; general ledgers; night auditor and maid reports; traffic summaries; source of business reports; and any other documents which support room revenues and exemptions. Said records shall be filed in a manner that allows ready access by an authorized agent of the County, who shall have the right to inspect same at all times.

- C. In all instances where a hotel operator claims an exemption pursuant to Regulations, said operator shall maintain among his records folios; lease agreements; vouchers; and specifically in the case of Regulation 101 relating to exemptions, copies of I.D. Cards or other records indicating the exempt occupant's job number, employer, place of employment or other identifying information. The aforementioned records shall be filed in a manner that allows ready access by an authorized agent of the County.

REGULATION 108: REFUNDS

Refunds-

- A. Whenever the amount of any tax, interest or penalty has been overpaid, paid more than once, or erroneously or illegally collected or received by the County under the Ordinance, or regulations relative thereto, it may be refunded as provided in subparagraphs B and C of this regulation provided a verified written claim therefore stating the specific ground upon which the claim is founded, is filed with the County Treasurer within three (3) years of date of payment. The claim is found in the Appendix of these regulations.
- B. An operator may claim a refund when it is established in a manner prescribed by the Treasurer, that the person from whom the tax has been collected was not an occupant subject to the tax; provided, however, that a refund shall not be allowed unless the amount of the tax collected has either been refunded to the guest or credited to rent subsequently payable to the operator.
- C. No refund shall be paid under the provisions of the section unless claimant establishes his right thereto by written records showing entitlement thereto.

REGULATION 109: ACTIONS TO COLLECT

Any tax required to be paid by an occupant under the provisions of this Ordinance shall be deemed a debt owed by the occupant to the County. Any such tax collected by an operator which has not been paid to the County shall be deemed a debt owed by the operator to the County. Any person owing money to the County by the provisions of the Ordinance shall be liable to an action brought under the name of the County for the recovery of such amount.

REGULATION 110: BAD DEBT DEDUCTIONS

Bad debts, guests leaving without payment of charges or otherwise uncollectible room charges, may be deducted from gross rental to arrive at taxable rent of accrual base operators as provided:

- A. The amount of this deduction is shown on line "2" of the tax return filed at the appropriate time as provided for in subsection B below.
- B. The uncollected account is at least one hundred and twenty (120) days old.
- C. The operator provides a list with the return showing the name and address of the occupant, the date of the charge and the reason for its uncollectability and any means of identification of the occupant in the hotel's possession, such as driver's license, social security number, or credit card numbers.
- D. The operator shall previously have filed with the County Treasurer a statement outlining the hotel's guidelines and procedures regarding collections of bad debts and subsequent write-offs of these accounts.
- E. The deduction is fully supported by registration or folio cards maintained separately from other records and batched by accounting period to facilitate audit.

"Appendix p. i"
AFFIDAVIT FOR REFUND OF ALLEGHENY COUNTY
HOTEL ROOM RENTAL TAX

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) SS:

Before me, the undersigned authority, a notary public, personally appeared _____, who, being duly sworn according to law, deposes and states as follows:

1. He/She is _____

(Give names of establishment, relationship thereto, i.e., owner, president, etc.)

2. Said hotel is located At _____

(Give number, street, city and zip code)

3. Said hotel is entitled to a refund of hotel room rental taxes paid for the quarterly/monthly return of _____ to _____, _____, in the amount of _____ for the following reasons:

(Give detailed explanation of basis for refund, i.e., overpayment, twice paid, etc., and attach supporting material such as totals of receipts for period, etc.)

AFFIANT

SWORN TO AND SUBSCRIBED
before me this _____ day of _____, _____.