

RESOLUTION ADOPTING PICKENS COUNTY
HOTEL/MOTEL OCCUPANCY TAX

ARTICLE 1. Definitions.

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

County means the unincorporated area of Pickens County.

Guestroom means a room occupied or intended, arranged or designed for occupancy by one or more occupants.

Hotel means any structure or any portion of a structure, including any lodginghouse, roominghouse, dormitory, Turkish bath, bachelor hotel, studio hotel, motel, auto court, inn, public club or private club, containing guestrooms and which is occupied or is intended or designed for occupancy by guests, whether rent is paid in money, goods, labor or otherwise. The term does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention building or other building in which human beings are housed or detained under legal restraint.

Occupancy means the use or possession or the right to the use or possession of any room or apartment in a hotel, or the right to the use or possession of the furnishings or the services and accommodations accompanying the use and possession of the room.

Occupant means any person who, for a consideration, uses, possesses, or has the right to use or possess any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Operator means any person operating a hotel in the county, including but not limited to the owner or proprietor of such premises, a lessee, sublessee, mortgagor in possession or licensee, or any other person otherwise operating such hotel.

Permanent resident means any occupant as of a given date who has or shall have occupied, or has or shall have the right of occupancy, of any guestroom in a hotel for at least ten consecutive days next preceding such date.

Person means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate

or other group or combination acting as a unit, excepting the United States of America and the state, and any political subdivision of either thereof upon which the county is without power to impose the tax provided for in this article.

Rent means the consideration received for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

Return means any return filed or required to be filed as provided in this article.

Supervisor means the supervisor of the County Clerk's office, or any office of the county which may in the future be designated as the administrative entity to collect the hotel/motel occupancy tax.

Tax means the tax imposed by this article.

ARTICLE II. Administration and enforcement of article; records.

(a) **Authority of County Clerk.** The County Clerk shall administer and enforce the provisions of this article.

(b) **Additional rules and regulations.** The County Clerk shall have the power and the authority to make and publish reasonable rules and regulations, not inconsistent with this article or other laws of the county and the state or the constitution of this state or the United States, for the administration and enforcement of the provisions of this article and the collection of taxes under this article.

(c) **Required records.** Every operator renting guestrooms in the county shall keep such records, receipts, invoices and other pertinent papers in such form as the supervisor may require.

(d) **Examination of records.** The County Clerk, or any person authorized in writing by the Clerk, may examine the books, papers, records, financial reports, equipment and other facilities of any person renting guestrooms and any person liable for the tax, and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(e) **Authority to require reports.** In administration of the tax, the County Clerk may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to rentals of guestrooms which are subject to the tax. The

reports shall be filed with the County Clerk when required by the Clerk, and shall set forth the rental charged for each occupancy, the dates of occupancy, and such other information as the County Clerk may require.

(f) Confidentiality of information. The County Clerk or any person having an administrative duty under this article shall not make known, in any manner whatever, the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses or expenditure, or any particular thereof, set forth or disclosed in any return, or permit any return or copy thereof, or any book containing any abstract or particulars thereof, to be seen or examined by any person not having administrative duty under this article. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, and interest and penalties.

ARTICLE III: Levy; rate.

There shall be paid a tax of six percent of the rent for every occupancy of a guestroom in a hotel in the county. The tax imposed by this article shall be paid upon any occupancy on and after January 1, 1998.

ARTICLE IV. Persons liable for tax; extinguishment of liability.

Every person occupying a guestroom in a hotel in this county is liable for the tax imposed by this article. His liability is not extinguished until the tax has been paid to the county, except that a receipt is sufficient to relieve the occupant from further liability for the tax to which the receipt refers, provided such receipt is from an operator maintaining a place of business in this county or from an operator who is authorized by the supervisor of the County Clerk, under such rules and regulations as he may prescribe, to collect the tax and who is, for the purpose of this article, regarded as an operator maintaining a place of business in this county.

ARTICLE V. Exemptions.

No tax shall be imposed under this article upon:

- (1) A permanent resident.

(2) A corporation or association organized and operated exclusively for religious, charitable or educational purposes, or for more than one of such purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(3) An occupant whose rent will be paid directly by warrant on funds of the federal, state or county government, or any other government within the state or the United States.

ARTICLE VI. Registration of operators; certificate of authority.

Every person engaging or about to engage in business as an operator of a hotel in the county shall immediately register with the County Clerk, on a form provided by the Clerk. Such registration shall set forth the name under which such person transacts business, the location of the place of business, and such other information to facilitate the collection of the tax as the County Clerk may require. The registration shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; and in the case of a corporation, by an executive officer or someone specifically authorized by the corporation to sign the registration. The supervisor of the County Clerk shall, within ten days after such registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of such registrant. 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. Such certificate shall be nonassignable, and shall be returned to the County Clerk upon the cessation of business at the location named or upon its sale or transfer.

ARTICLE VII. COLLECTION BY OPERATOR.

Every operator maintaining a place of business in the county as provided in Article IV, and renting guestrooms in the county, shall collect the tax imposed by this article at the time of collecting the rent from the occupant, and on demand shall give the occupant a receipt therefor. In all cases of transactions upon credit or deferred payment, the payment of the tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefor at the time and to the extent that such credits are incurred in accordance with the rate of tax owing on thereof. The Commissioner shall have the power to adopt rules and regulations prescribing methods and schedules for the collection and payment of the tax.

ARTICLE VIII. Unlawful advertising regarding tax.

It is unlawful for any operator to advertise or hold out or state

to the public or to any guest, directly or indirectly, that the tax imposed by this article or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rental of the guestroom, or that, if added, it or any part thereof will be refunded.

ARTICLE IX. Returns; payment.

(a) **Due date for payment.** The tax imposed by this article shall become due and payable from the occupant at the time of occupancy of any hotel in this county. All amounts of such taxes collected by an operator are due and payable to the County Clerk between the first and 20th day of the calendar month next following the calendar month or fiscal period for which the return is being filed.

(b) **Filing of return.** Each operator or person liable for payment of the tax shall file a return monthly with the County Clerk in such form as the Clerk may prescribe.

(c) **Contents of return.** All returns shall show the gross rent, rent from permanent residents, rents exempt from tax, taxable rent, amount of tax collected or otherwise due for the related period, and such other information as required by the County Clerk.

(d) **Collection allowance.** Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction for submitting, reporting and paying the amount due, if such amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under the Georgia Retailers and Consumers' Sales and Use Tax Act, approved February 20, 1951, as amended.

(e) **Extension of time for filing return or paying tax.** For good cause, the supervisor of the County Clerk may extend, for a period not to exceed one month, the time for making any return or payment of tax. No further extension of time may be granted. Any person to whom an extension of time has been granted, who makes a return and pays the tax within the period of extension, shall pay, in addition to the tax, interest on the amount thereof at the rate of one percent per month, or fraction thereof, for the period of such extension, to the time of making the return and payment.

ARTICLE X. Deficiency or overpayment; late payment.

(a) **Recomputation of tax.** If the County Clerk is not satisfied with the returns of the tax or the amount of the tax required to be paid to the county by any person, it may compute and determine the amount required to be paid upon the basis of any information within its possession or that may come into its possession. One of more than one deficiency determination may be made of the amount due for one or more than one period.

(b) **Interest on deficiency or late payment.** The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent per month, or fraction thereof, from the first day after the close of the prior monthly period for which the amount or any portion thereof should have been returned, until the date of payment.

(c) **Offsetting of overpayments.** In making a determination, the County Clerk may offset overpayment for a period against underpayments for another period, against penalties, and against the interest on underpayments. However, if it is determined by the supervisor that overpayment of occupancy tax was made by the occupants to the operator, all overpayments of tax will be made to the County Clerk without any operator's compensation for collection of the overpayment.

(d) **Penalty for delinquent payment.** When a return or remittance is delinquent, the operator shall not be allowed the applicable compensation for accounting for and remitting the tax, and he must remit the total amount due. The total amount due is the gross tax, without deduction for the operator's compensation, plus interest, plus a specific penalty, to be added to the tax, of ten percent of the gross tax due, per month, from the first day after the close of each monthly period for which the tax is due until the date of payment.

(e) **Penalty for fraud or intent to evade tax.** If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade any provision of this article or other authorized rules and regulations, a penalty of 25 percent of the deficiency shall be added thereto in addition to interest and penalties due to late payment.

(f) **Service of notices.** The County Clerk or designated representative shall give to the operator written notice of its determination under this section. The notice may be served personally or by mail. If served by mail, the notice shall be addressed to the operator at his address as it appears in the records of the County Clerk. In case of service by mail of any notice required by this article, the service is complete at the time of deposit in the United States Post Office.

(g) **Time limit for service of notice of deficiency determination.** Except in the case of fraud, intent to evade this article or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the fifth day of the calendar month for which the amount is proposed to be determined, or within three years after the return is filed, whichever period expires later.

ARTICLE XI. Collection of unpaid tax; refunds.

(a) **Determination of tax when no return made.** If any person fails to make a return as required by this article, the County Clerk shall make an estimate of the amount of the gross receipts of the person, or as the case may be, of the amount of the total rentals in this county which are subject to the tax. The estimate shall be made for the period in respect to which the person failed to make the return, and shall be based upon any information which is in the possession of the County Clerk, or which may come into its possession. Upon the basis of this estimate, the County Clerk shall compute and determine the amount required to be paid the county, adding to the sum, per month, from the day after the close of each monthly period for which tax is due until the date of payment, a penalty equal to ten percent thereof. One or more than one determination may be made for one or for more than one period.

(b) **Notice to persons holding credits or property of delinquent taxpayer.** If any person is delinquent in the payment of the amount required to be paid by him, or if a determination has been made against him which remains unpaid, the County Clerk may, not later than three years after the payment becomes delinquent, give notice thereof by registered mail to all persons in the county who have in their possession or under their control any credits or other personal property belonging to the delinquent person, or owing any debts to the delinquent person. After receiving the notice, the persons so notified may not transfer or dispose of any such credits, other personal property or debts in their possession or under their control at the time they receive the notice until the County Clerk consents to a transfer or disposition or until 20 days elapse after the receipt of the notice. All persons so notified shall, within five days after receipt of the notice, advise the County Clerk of all such credits, other personal property or debts in their possession, under their control or owing by them.

(c) **Action to collect tax.** At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the supervisor may bring an action in the courts of this state or any other state, or of the United States, in the name of the county, to collect the amount delinquent, together with penalties and interest, court fees and other legal fees incident thereto.

(d) **Duty of successors of operator to withhold tax from purchase money.** If any operator liable for any amount under this article sells out his business or quits the business, his successors or assignees shall withhold a sufficient amount of the purchase price to cover such obligation until the former owner produces a receipt from the County Clerk showing that the county has been paid or a certificate stating that no amount is due.

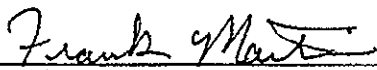
(e) Failure of successor of operator to withhold tax. If the purchaser of a business fails to withhold the tax from the purchase price as required by this section, he becomes personally liable for the payment of the amount required to be withheld by him, to the extent of the purchase price, valued in money. Within 30 days after, the supervisor shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the County Clerk of the amount that must be paid as a condition of issuing the certificate. Failure of the County Clerk to mail the notice will release the purchaser from any further obligation to withhold the tax from the purchase price as provided in this section. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out his business, or at the time the determination against the operator becomes final, whichever event occurs later.

(f) Refunds. Whenever 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 county under this article, it may be refunded, provided a verified claim in writing therefor, stating the specific grounds upon which the claim is founded, is filed with the County Clerk within three years from the date of payment. The claim shall be audited and shall be made on forms provided by the supervisor. If the claim is approved by the Commissioner, the excess amount collected or paid may be refunded or may be credited on any amounts that are due and payable from the person from whom it was collected or by whom paid and the balance executors.


ARTICLE XII. Failure to register or furnish return or other data; making false return or report.

Any operator or other person who fails to register as required in this article, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the supervisor, or who renders a false or fraudulent return, is guilty of a misdemeanor, and is punishable as provided in this article. Any person required to make, render, sign or verify any report under this article who makes any false or fraudulent report with intent to defeat or evade the determination of an amount due under this article is guilty of a violation of a county ordinance and is punishable as provided in this article.

ADOPTED this 14th day of November, 1997.


 Frank Martin
 Commissioner

ATTEST:


 Deborah Watson, Clerk