

ARTICLE II. - LODGING TAX<sup>[2]</sup>

Footnotes:

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**Cross reference**— *Businesses, ch. 14.*

**State Law reference**— *Local lodging tax, Minn. Stat. § 469.190.*

## DIVISION 1. - GENERALLY

## Sec. 74-26. - 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:

*City* means the City of Northfield, Minnesota.

*Director* means the finance director of the city.

*Lodger* means the person obtaining lodging from an operator.

*Lodging* means the furnishing for consideration of lodging by a hotel, motel, rooming-house, tourist court, resort, municipal campground or the granting of any similar license to use real property, except where such lodging shall be for a continuous period of 30 days or more to the same lodger.

*Operator* means a person who provides lodging to others or any officer, agent or employee of such person.

*Person* means any individual, corporation, partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate or any other combination of individuals. Whenever the term "person" is used in any provision of this chapter prescribing and imposing a penalty, the term as applied to a corporation, association, or partnership, shall mean the officers or partners thereof as the case may be.

*Rent* means the gross receipts from the furnishing for consideration of lodging by an operator, whether paid in money or otherwise.

(Code 1986, § 140:05; Ord. No. 947, § 1, 5-7-2013)

**Cross reference**— Definitions generally, § 1-2.

## Sec. 74-27. - Imposed.

Pursuant to authority granted under Minn. Stat. § 469.190, there is imposed a tax of three percent on the rent charged by an operator for providing lodging to any person. The tax collected by the operator shall be a debt owed by the operator to the city, a lien on the real property to which it applies, and shall be extinguished only by payment to the city.

(Code 1986, § 140:10; Ord. No. 947, § 1, 5-7-2013)

**State Law reference**— Authority for above tax, Minn. Stat. § 469.190, subd. 1.

## Sec. 74-28. - Collections.

Each operator shall collect the tax imposed by this article at the time the rent is paid. The tax collections 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.

(Code 1986, § 140:15)

Sec. 74-29. - Exceptions and exemptions.

- (a) *Exceptions.* No tax shall be imposed on rent for lodging paid by any officer or employee of a foreign government who is exempt because of express provisions of federal law or international treaty.
- (b) *Exemptions.* No tax 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 such a claim shall be made in writing and under penalty of perjury on forms provided by the city. All such claims shall be forwarded to the city when the returns and collections are submitted as required by this article.

(Code 1986, § 140:20)

Sec. 74-30. - 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 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 rent or that, if added, it or any part of it will be refunded.

(Code 1986, § 140:25)

Sec. 74-31. - Payment and returns.

- (a) The taxes imposed by this article shall be paid by the operator to the city monthly not later than 30 days after the end of the month in which the taxes were collected, except that the director may alternatively require quarterly payment and returns by an operator where the tax imposed in a quarter is \$250.00 or less. At the time of payment the operator shall submit a return upon such forms and containing such information as the director may require. 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 amount of tax required to be collected and due for the period.
  - (3) The signature of the person filing the return or that of his/her agent duly authorized in writing.
  - (4) The period covered by the return.
  - (5) The amount of uncollectible rental charges subject to the lodging tax.
  - (6) A copy of the Minnesota state sales and use tax return submitted by the operator for the period covered by the return.
  - (7) Such other information as the director from time to time may, in his or her discretion, require.
- (b) The operator may offset against the taxes payable with respect to any reporting period the amount of taxes imposed by this article previously paid as a result of any transaction, the consideration for which became uncollectible during such reporting period, but only in proportion to the portion of such consideration which became uncollectible.

- (c) In computing the tax to be collected, amounts of tax less than one-half of one cent shall be disregarded, and one-half of one cent or more shall be considered an additional cent.

(Code 1986, § 140:30; Ord. No. 947, § 1, 5-7-2013)

Sec. 74-32. - Refunds.

Any person may apply to the director for a refund of lodging taxes paid in excess of the amount legally due for a prescribed period, provided that no application for a refund shall be considered unless filed within one year after such tax was paid or within one year from the filing of the return, whichever period is longer. The director shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by certified mail to such person at the address stated upon the return. Any allowance shall include interest on the excess determined at the rate as provided in section 74-63(e) from the date such excess was paid or collected until the date it is refunded or credited. If such claim is allowed in whole or in part, the director shall credit the amount of the allowance against any taxes due under this article from the claimant, and the balance of the allowance, if any, shall be paid by the director to the claimant.

(Code 1986, § 140:40)

Sec. 74-33. - Failure to file return.

If an operator required by this article to file a return shall refuse or fail to do so within the time prescribed or shall make, willfully or otherwise, any incorrect, false, or fraudulent return, the operator shall, upon written notice and demand, file such return or corrected return within five days of receipt of such written notice and shall at the same time pay any tax due on the basis thereof. If such person shall refuse or fail to file such return or corrected return, the director shall make a return or corrected return for such person from such knowledge and information as the director 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 such return, shall be paid within five days of the receipt of written notice and demand for such payment. Any such return or assessment made by the director shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

(Code 1986, § 140:45; Ord. No. 947, § 1, 5-7-2013)

Sec. 74-34. - Violations.

In addition to any other penalties that may be provided by this article, any person who commits any of the following shall be guilty of a misdemeanor:

- (1) Any willful violation of any provision of this article, or
- (2) The failure to tender or make a return required by this article, or
- (3) The failure to pay the tax after written demand for payment, or
- (4) The failure to remit the taxes collected or any penalty or interest imposed by this article after written demand for such payment, or
- (5) The refusal to permit the director or any duly authorized agents or employees to examine the books, records and papers under his/her control, or
- (6) The tendering of any incomplete, false or fraudulent return.

(Code 1986, § 140:75; Ord. No. 947, § 1, 5-7-2013)

Secs. 74-35—74-60. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT<sup>[3]</sup>

*Footnotes:*

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**Cross reference**— *Administration, ch. 2.*

Sec. 74-61. - Duties of director.

The director shall administer and enforce the assessment and collection of the taxes imposed by this article. The director shall cause to be prepared blank forms for the returns and other documents required by this article and shall distribute the forms and documents throughout the city and furnish them on application, but failure to receive or secure them shall not relieve any person from any obligation required of him/her under this article.

(Code 1986, § 140:55)

Sec. 74-62. - Examination of return, adjustments, notices and demands.

The director may rely upon the Minnesota state sales and use tax return filed by the operator with the state in determining the accuracy of a return filed under this chapter. However, the director shall be authorized, after a return is filed pursuant to this article, to examine the return and make any investigation or examination of the records and accounts of the person making the return if the director reasonably determines that such steps are necessary for determining the correctness of the return. The tax computed on the basis of such examination shall be the tax to be paid. If the tax due is found to be greater than that paid, such excess shall be paid to the city within ten days after receipt of a notice thereof given either personally or sent by certified mail 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 days after determination of such refund.

(Code 1986, § 140:35; Ord. No. 947, § 2, 5-7-2013)

Sec. 74-63. - Interest, penalties and extensions.

- (a) *Failure to timely pay tax.* If any tax imposed by this article or any portion thereof is not paid within the time specified in this article for the payment or an extension thereof, there shall be added thereto a specific penalty equal to ten percent of the amount remaining unpaid.
- (b) *Failure to timely file return.* If any person shall fail or refuse to make and file a return within the time prescribed by this article or an extension thereof, there shall be added to the tax, in addition to any applicable penalty provided in subsection (a) of this section, ten percent if the failure is for not more than 30 days following the required reporting period with an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. If the penalty as computed does not exceed \$10.00, a minimum penalty of \$10.00 shall be assessed. 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.
- (c) If any person fails or refuses to file any return or make any payment required by this article or files a false or fraudulent return or attempts in any manner to evade or defeat any such tax or payment thereof, there shall also be imposed on the person as a penalty an amount equal to 50 percent of any tax, less any amounts paid by the person on the basis of such false or fraudulent return, found

due for the period to which such return [is] related. The penalty imposed by this subsection shall be collected as part of the tax and shall be in addition to any other penalties, civil and criminal, provided by this article.

- (d) All payments received shall be credited first to penalties, next to interest, and then to the tax due.
- (e) The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the rate specified in Minn. Stat. § 270C.40 from the time such tax should have been paid until paid. Any interest and penalty shall be added to the tax and shall be collected as a part thereof.
- (f) If an operator fails to pay a tax and/or penalty imposed hereunder within 30 days after it is required to be paid, the tax and/or penalty may be specially assessed against the real property on which the lodging establishment is located in the same manner as a special assessment for other unpaid city charges.
- (g) As an alternative to a special assessment, if any portion of a tax imposed by this article, including interest and penalties thereon, is not paid within 30 days after it is required to be paid, the city may institute such legal action as may be necessary to recover the amount due plus attorney's fees, costs and disbursements incurred in any action.
- (h) Upon a showing of good cause, the director may grant an operator one 30-day extension of time within which to file a return and make payment of taxes as required by this article.

(Code 1986, § 140:50; Ord. No. 947, § 2, 5-7-2013)

#### Sec. 74-64. - Examination of records.

The director and those persons acting on behalf of the director, authorized in writing by the director, 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 article. Every such operator is directed and required to give to the director, or such other authorized agent or employee designated by the director, the means, facilities and opportunity for such examinations and investigations as are authorized by this article.

(Code 1986, § 140:60; Ord. No. 947, § 2, 5-7-2013)

#### Sec. 74-65. - Confidential information.

- (a) Data, other than basic taxpayer identification data, collected from taxpayers under this article are nonpublic data pursuant to the Minnesota Government Data Practices Act, Minn. Stat. § 13.395. No city officer or employee shall divulge or otherwise make known in any manner any particulars disclosed in any return required by this article or any information concerning the affairs of the person making the return acquired from such person's records, officers, or employees while performing an examination or audit, except in connection with a proceeding involving taxes due under this article from the person making such return. Nothing contained in this subsection, unless otherwise provided by law, shall be construed to prohibit the director from publishing statistics so classified as not to disclose the identity of particular returns and the contents thereof.
- (b) Notwithstanding subsection (a) of this section, the city may enter into an agreement providing for the administration and collection of the tax imposed by this article by the state department of taxation and its officers and agents.

(Code 1986, § 140:65; Ord. No. 947, § 2, 5-7-2013)

#### Sec. 74-66. - Contract with state.

Pursuant to Minn. Stat. § 469.190, subd. 7, the city council may, but need not, agree with the state commissioner of revenue that the tax imposed under this article shall be collected by the commissioner together with the tax imposed by Minn. Stat. ch. 297A and shall be subject to the same interest, penalties, and other rules and that its proceeds, less the cost of collection, shall be remitted to the city. To the extent that the sections of this article are in conflict with any statutes, rules or regulations which control under any such agreement with the commissioner, the provisions of such statutes, rules and regulations shall prevail.

(Code 1986, § 140:70; Ord. No. 947, § 2, 5-7-2013)

**State Law reference—** Collection by state authorized, Minn. Stat. § 469.190, subd. 7.

Sec. 74-67. - Use of proceeds.

- (a) At least 95 percent of the gross proceeds obtained from the collection of taxes pursuant to this article shall be used to fund a local convention or tourism bureau for the purpose of marketing and promoting the city as a tourist or convention center. The remainder of the proceeds may be deposited in the city's general fund or in any other fund as may be designated from time to time by the city council.
- (b) The city council may establish or join in the creation of a local convention or tourism bureau, which shall administer the funds appropriated to it for the purpose of marketing and promoting the city as a tourist or convention center.
- (c) Annually, prior to the second regular meeting of the city council in October, the convention or tourism bureau shall prepare and submit to the council for its approval a budget of the bureau's activities for the next fiscal year. No proceeds of the lodging tax for the subsequent fiscal year shall be distributed to the bureau until the budget for that fiscal year has been approved by the city council.

(Code 1986, § 140:80; Ord. No. 947, § 2, 5-7-2013)

**State Law reference—** Use of proceeds, Minn. Stat. § 469.190, subd. 3.

Sec. 74-68. - Appeals.

- (a) Any operator aggrieved by any notice, order or determination made by the director under this article may file a petition for review of such notice, order or determination detailing the operator's reasons for contesting the notice, order or determination. The petition shall contain the name of the petitioner, the petitioner's address and the location of the lodging subject to the order, notice or determination.
- (b) The petition for review shall be filed with the city administrator within ten days after the notice, order or determination for which review is sought has been mailed to or served upon the person requesting the review.
- (c) Upon receipt of the petition, the city administrator shall set a date for a hearing and shall 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. The petitioner may be represented by counsel of the petitioner's choosing at the petitioner's own expense.
- (e)

The hearing shall be conducted by the city administrator, provided only that the person conducting the hearing shall not have participated in the drafting of the order, notice or determination for which review is sought.

- (f) The person conducting the hearing shall make written findings of fact and conclusions based upon the applicable sections of this article and the evidence presented. The person conducting the hearing may affirm, reverse or modify the notice, order or determination for which review is sought. The decision shall be mailed by certified mail to the petitioner at the address stated in the petition.
- (g) Any decision rendered by the city administrator pursuant to this section may be appealed to the city council. A petitioner seeking to appeal a decision must file a written notice of appeal with the city administrator within ten days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the council agenda as soon as is practical. The council shall then review the findings of fact and conclusions to determine whether they were correct. The council may modify, reverse or affirm the decision of the city administrator upon the same standards as set forth in subsection (f) of this section.

(Code 1986, § 140:85)

Secs. 74-69—74-95. - Reserved.