

Chapter 16A - HOTEL OCCUPANCY TAX⁽¹⁾

Footnotes:

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Editor's note— Ord. No. 8930, § 1, adopted Mar. 13, 2008, amended Ch. 16A, §§ 16A-1—16A-13, in its entirety, in effect deleting Ch. 16A, §§ 16A-1—16A-13, and enacting a new Ch. 16A, §§ 16A-1—16A-23, to read as set out herein. Former Ch. 16A, §§ 16A-1—16A-13, pertained to similar subject matter. For a complete history of former Ch. 16A, §§ 16A-1—16A-13, see the Code Comparative Table.

State Law reference— Hotel occupancy tax, V.T.C.A., Tax Code ch. 351.

ARTICLE I. - STANDARD HOTEL OCCUPANCY TAX

Sec. 16A-1. - Definitions.

In this article, the following words, terms, and phrases are, except where the context clearly indicates a different meaning, defined as follows:

Chief financial officer shall mean the chief financial officer of the City of Irving or his/her designated representative.

Consideration shall mean the cost of the room in such hotel used for sleeping, and shall not include the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

Hotel shall mean any building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses, or courts, lodging houses, inns, rooming houses or other buildings where rooms are furnished for a consideration, but "hotel" shall not be defined so as to include hospitals, sanitariums, or nursing homes.

Occupancy shall mean the use or possession, or the right to the use or possession, of any room in a hotel if the room is one (1) ordinarily used for sleeping and if the occupant's use, possession, or right to use or possession extends for a period of less than thirty (30) days.

Occupant shall mean anyone who for a consideration uses, possesses, or has a right to use or possess any room in a hotel if the room is one ordinarily used for sleeping.

Permanent resident shall mean any occupant who has or shall have the right to occupy any room or rooms or sleeping space or facility in a hotel for at least thirty (30) consecutive days during the current calendar year or preceding year, so long as there is no interruption in payment for the period.

Quarterly period shall mean a calendar quarter of the year; the first quarter is October, November, and December; the second quarter is January, February, and March; the third quarter is April, May, and June; and the fourth quarter is July, August, and September.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-2. - Levy of tax; rate; exceptions.

- (a) There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where the cost of occupancy is at the rate of two dollars (\$2.00) or more per day, such tax to be equal to seven (7) percent of the consideration paid by the occupant of such room, space or facility to such hotel, exclusive of other taxes imposed by other government a hotel does not include the cost of food served by the hotel or the cost of personal services performed by the hotel agencies. The price of a room inl for the person except those services related to the cleaning and readying of the room for possession.

- (b) Exceptions to the subsection (a) tax are as follows:
- (1) No tax shall be imposed hereunder upon a permanent resident.
 - (2) This chapter does not impose a tax on the United States, this state, or an agency, institution, board, or commission of this state other than an institution of higher education.
 - (3) This chapter does not impose a tax on an officer or employee of a governmental entity described in subsection (2) above when traveling on or otherwise engaged in the course of official duties for the governmental entity.
 - (4) No tax shall be imposed hereunder for diplomatic personnel who present a tax exemption card issued by the United States Department of State.
 - (5) No tax shall be imposed hereunder for federal or state military personnel traveling on official military business. This exemption does not cover military staff on leave or between stations.

(Ord. No. 8930, § 1, 3-13-08)

State Law reference— Hotel occupancy tax authorized, V.T.C.A., Tax Code § 351.002; rate of tax, V.T.C.A., Tax Code § 351.003; tax exemptions, V.T.C.A., Tax Code § 351.006.

Sec. 16A-3. - Collection.

- (a) Every person owning, operating, managing, or controlling any hotel or any employee of a hotel who in the course of their duties collects money from patrons in exchange for room occupancy, shall collect the tax imposed in section 16A-2 hereof for the city.
- (b) As of January 1, 1974, and thereafter, said tax shall be a preferred lien, first and prior to any and all other existing liens, contractual or statutory, legal or equitable, and regardless of the time such liens originated, and this lien shall attach as of the date such tax is due and payable but before such lien shall become a lien on real estate, notice thereof shall be filed in the county deed records where the real estate is located on which the lien is desired and said lien shall not be valid or effective as against any mortgagee, holder of a deed of trust, purchaser, pledgee, or judgment creditor acquiring title, lien, or other right or interest before such notice has been so filed and recorded.

(Ord. No. 8930, § 1, 3-13-08)

State Law reference— Collection of hotel tax, V.T.C.A., Tax Code § 351.004.

Sec. 16A-4. - Registration reports; quarterly reports to chief financial officer.

- (a) As a condition of operating a hotel in the city, the person who owns, operates, manages, or is in control of any hotel in the city, shall file a registration report with the chief financial officer. Said report shall be on a form provided by the finance department.
- (b) On the last day of the month following each quarterly period, every person required to collect the tax imposed hereby shall file a report with the chief financial officer showing the consideration paid for all room occupancies in the preceding quarter, the amount of the tax collected on such occupancies, and any other information or on any form the chief financial officer may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing the report. The report shall be in a form prescribed by the chief financial officer. The chief financial officer is hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this article. The chief financial officer shall have the authority to request and receive within a reasonable time documentation of information contained in the report to the city by the hotel. The hotel operator shall retain all such documentation for a period of two (2) years.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-5. - Rules and regulations for collection.

The chief financial officer shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied herein.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-6. - Civil penalties for failure to collect or remit.

If any person shall fail to file a report as required herein, or shall file a false report or shall fail to pay to the chief financial officer the tax as imposed herein when said report or payment is due, then such person shall be required to pay as a penalty in an amount equal to five (5) percent of the amount of tax due until said tax is thirty (30) days delinquent, which shall be a minimum amount of one dollar (\$1.00). After said tax is thirty (30) days delinquent, such person shall pay an additional penalty in an amount equal to ten (10) percent of the amount of tax due, provided, however, that the penalty shall never be less than one dollar (\$1.00). Delinquent taxes shall, in addition, draw interest at the rate of nine (9) percent per annum beginning sixty (60) days from the date due.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-7. - Additional civil penalties for failure to collect or remit.

The city is hereby authorized to take the following action against any person who is required to collect the tax imposed hereby and pay the collection over to the city and who has failed to file a report, or filed a false report, or failed to pay the tax when due or any person purchasing a hotel when the hotel owes occupancy taxes pursuant to section 16A-9:

- (1) Bring suit against the hotel for noncompliance; and/or
- (2) Bring suit against the hotel seeking any other remedies provided under law.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-8. - Additional authorization to bring suit.

The city attorney is hereby authorized to bring suit against any person required to collect the tax imposed hereby and required to pay the collection over to the city and who has failed to file a report, or filed a false report, or failed to pay the tax when due or any person purchasing a hotel when the hotel owes occupancy taxes, pursuant to section 16A-9. Such suit may seek to collect such tax not paid or to enjoin such person from operating a hotel in the city until the tax is paid or the report is filed or both, as applicable, and may seek any other remedies provided by law.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-9. - Collection procedures on purchase of hotel.

- (a) If a person who is liable for the payment of a tax under this article is the owner of a hotel and sells the hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt by the chief financial officer showing that the amount has been paid or a certificate showing that no tax is due.

- (b) The purchaser of a hotel who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.
- (c) The purchaser of a hotel may request that the chief financial officer provide a receipt under subsection (a) and issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The chief financial officer shall issue the certificate or statement not later than the sixtieth day after the date that the chief financial officer receives the request.
- (d) If the chief financial officer fails to issue the certificate or statement within the period provided by subsection (c), the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-10. - Criminal penalties for failure to collect or remit.

If any person shall fail to file a report as required herein, or shall file a false report, or shall fail to pay to the chief financial officer the tax as imposed here when said report or payment is due, then such person shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00), and each twenty-four (24) hours of any such violation shall constitute a separate offense.

(Ord. No. 8930, § 1, 3-13-08)

State Law reference— Penalty for ordinance violations, V.T.C.A., Local Government Code § 54.001.

Sec. 16A-11. - Administrative expenses.

The city shall retain a sufficient amount of the gross amount of the hotel occupancy tax collected to cover day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs so long as they are incurred in the promotion and servicing expenditures authorized under § 351.101(a) of the Texas Tax Code.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-12. - Disposition and use of revenue.

- (a) *Disposition by city council.* Two-sevenths ($2/7$) of the hotel occupancy tax as budgeted each year by the city council shall be administered by the city council and used for purposes authorized by § 351.101 of the Texas Tax Code, as amended.
- (b) *Disposition by convention and visitors bureau, arts center, and preservation and redevelopment board.* The revenue derived from five-sevenths ($5/7$) of the hotel occupancy tax as budgeted each year by the city council shall be administered by the Irving Convention and Visitors Bureau, the Irving Arts Center, and the Irving Preservation and Redevelopment Board and may only be used for the purposes authorized by statute (Texas Tax Code § 351.101, as amended).
 - (1) *Administration of revenue by convention and visitors bureau.* Fifty-seven (57) percent of the revenue derived from this tax shall be administered by the Irving Convention and Visitors Bureau as approved by city council.

- (2) *Administration of revenue by arts center.* Thirty-five and one-half (35½) percent of the revenue derived from this tax shall be administered by the Irving Arts Center as approved by city council. Only fifteen (15) percent of the revenue derived from this tax shall be used for purposes set out in § 351.101(a)(4) of the Texas Tax Code. Twenty and one-half (20½) percent of the revenue derived from this tax administered by the Irving Arts Center shall be used for purposes other than § 351.101(a)(4) as allowed by state law.
 - (3) *Administration of revenue by preservation and redevelopment board.* One (1) percent of the revenue derived from this tax shall be administered by the Irving Preservation and Redevelopment Board as approved by city council.
 - (4) *Museum purposes.* Two and one-half (2½) percent of the revenue derived from this tax shall be dedicated for museum purposes and shall be administered as provided by city council.
 - (5) *Convention center and entertainment venue debt service.* Four (4) percent of the revenue derived from this tax shall be dedicated to the payment of debt service on any obligations issued by the city relating to the convention center and entertainment venue project or for maintenance, and operations requirements of the convention center and entertainment venue as approved by city council and authorized under Chapter 351, Texas Tax Code, as amended
- (c) Notwithstanding the allocation of hotel occupancy tax revenues herein, the city council may pledge all or a portion of its hotel occupancy tax revenues to the payment of bonds or other obligations (Texas Tax Code § 351.102, as amended).
 - (d) Notwithstanding the allocation of hotel occupancy tax in (b) herein, all hotel occupancy tax revenues generated from the Irving Convention Center Hotel shall be pledged to or otherwise used for the payment of bonds or other obligations by the city and shall not be allocated pursuant to section (b) of this section.

(Ord. No. 8930, § 1, 3-13-08; Ord. No. 2008-8998, § 1, 10-2-08; [Ord. No. 2017-9901](#), § 1, 1-12-17)

Sec. 16A-13. - Reserved.

ARTICLE II. - COMMUNITY VENUE HOTEL OCCUPANCY TAX

Sec. 16A-14. - Definitions.

In this article, the following words, terms, and phrases are, except where the context clearly indicates a different meaning, defined as follows:

Chief financial officer shall mean the chief financial officer of the City of Irving or his/her designated representative.

City shall mean the City of Irving, Texas.

Consideration shall mean the cost of a room in a hotel used for sleeping, and shall not include the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

Hotel shall mean any building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, or other buildings where rooms are furnished for a consideration, but "hotel" shall not be defined so as to include hospitals, sanitariums, or nursing homes.

Occupancy shall mean the use or possession, or the right to the use or possession, of any room in a hotel if the room is one ordinarily used for sleeping and if the occupant's use, possession, or right to use or possession extends for a period of less than thirty (30) days.

Occupant shall mean anyone who for a consideration uses, possesses, or has a right to use or possess any room in a hotel if the room is one ordinarily used for sleeping.

Permanent resident shall mean any occupant who has or shall have the right to occupy any room or rooms or sleeping space or facility in a hotel for at least thirty (30) consecutive days during the current calendar year or preceding year, so long as there is no interruption in payment for the period.

Person shall mean any individual, partnership, trust, company, corporation, association, or other entity.

Project fund shall mean the "Venue Project Fund" created pursuant to the resolution.

Quarterly period shall mean a calendar quarter of the year; the first quarter is October, November, and December; the second quarter is January, February, and March; the third quarter is April, May, and June; and the fourth quarter is July, August, and September.

Resolution shall mean the resolution adopted by the city council on March 13, 2008, establishing the Venue Project Fund.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-15. - Tax imposed.

- (a) There is hereby levied and imposed a tax upon the cost of occupancy of any room or space furnished by any hotel where the cost of occupancy is at the rate of two dollars (\$2.00) or more per day, such tax to be equal to two (2) percent of the consideration paid by the occupant of such room, space, or facility to such hotel, exclusive of other taxes imposed by other governmental agencies. The price of a room in a hotel does not include the cost of food served by the hotel or the cost of personal services performed by the hotel for the person except those services related to the cleaning and readying of the room for possession.
- (b) Exceptions to the subsection (a) tax are as follows:
 - (1) No tax shall be imposed hereunder upon a permanent resident.
 - (2) This article does not impose a tax on the United States, this state, or an agency, institution, board, or commission of this state other than an institution of higher education.
 - (3) This article does not impose a tax on an officer or employee of a governmental entity described in subsection (2) above when traveling on or otherwise engaged in the course of official duties for the governmental entity.
 - (4) No tax shall be imposed hereunder for diplomatic personnel who present a tax exemption card issued by the United States Department of State.
 - (5) No tax shall be imposed hereunder for federal or state military personnel traveling on official military business. This exemption does not cover military staff on leave or between stations.

(Ord. No. 8930, § 1, 3-13-08)

State Law reference— Hotel occupancy tax authorized, V.T.C.A., Tax Code § 351.002; rate of tax, V.T.C.A., Tax Code § 351.003; tax exemptions, V.T.C.A., Tax Code § 351.006.

Sec. 16A-16. - Collection of tax.

- (a) Every person owning, operating, managing, or controlling any hotel or any employee of a hotel who in the course of their duties collects money from patrons in exchange for room occupancy, shall collect the tax imposed in section 16A-15 hereof for the city.

- (b) On the last day of the month following each quarterly period, every person required to collect the tax imposed hereby shall file a report with the chief financial officer showing the consideration paid for all room occupancies in the preceding quarter, the amount of the tax collected on such occupancies, and any other information or on any form the chief financial officer may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing the report. The report shall be in a form prescribed by the chief financial officer. The chief financial officer is hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this article. The chief financial officer shall have the authority to request and receive within a reasonable time documentation of information contained in the report to the city by the hotel. The hotel operator shall retain all such documentation for a period of two (2) years.

(Ord. No. 8930, § 1, 3-13-08)

State Law reference— Collection of hotel tax, V.T.C.A., Tax Code § 351.004.

Sec. 16A-17. - Reports; payment to the city; records.

- (a) As a condition of operating a hotel in the city, the person who owns, operates, manages or is in control of any hotel in the city, shall file a registration report with the chief financial officer. Said report shall be on a form provided by the finance department.
- (b) On the last day of the month following each quarterly period, every person required to collect the tax imposed hereby shall file a report with the chief financial officer showing the consideration paid for all room occupancies in the preceding quarter, the amount of the tax collected on such occupancies, and any other information or on any form the chief financial officer may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing the report. The report shall be in a form prescribed by the chief financial officer. The chief financial officer is hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this article. The chief financial officer shall have the authority to request and receive within a reasonable time documentation of information contained in the report to the city by the hotel. The hotel operator shall retain all such documentation for a period of two (2) years.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-18. - Use of revenue derived from imposition of tax.

The revenue derived from the two (2) percent tax imposed under this article must be deposited into the project fund and may be used as set forth in the resolution.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-19. - Rules and regulations.

The chief financial officer shall have the power to make any rules and regulations necessary to effectively collect the tax levied herein.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-20. - Civil penalties for failure to collect or remit.

If any person shall fail to file a report as required herein, or shall file a false report or shall fail to pay to the chief financial officer the tax as imposed herein when said report or payment is due, then such person shall be required to pay as a penalty an amount equal to five (5) percent of the amount of tax due

until said tax is thirty (30) days delinquent, which shall be a minimum amount of one dollar (\$1.00). After said tax is thirty (30) days delinquent, such person shall pay an additional penalty in an amount equal to ten (10) percent of the amount of tax due, provided, however, that the penalty shall never be less than one dollar (\$1.00). Delinquent taxes shall, in addition, draw interest at the rate of nine (9) percent per annum beginning sixty (60) days from the date due.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-21. - Additional authorization to bring suit.

The city attorney is hereby authorized to bring suit against any person required to collect the tax imposed hereby and required to pay the collection over to the city and who has failed to file a report, or filed a false report, or failed to pay the tax when due or any person purchasing a hotel when the hotel owes occupancy taxes, pursuant to section 16A-22. Such suit may seek to collect such tax not paid or to enjoin such person from operating a hotel in the city until the tax is paid or the report is filed or both, as applicable, and may seek any other remedies provided by law.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-22. - Collection procedures on purchase of hotel.

- (a) If a person who is liable for the payment of a tax under this article is the owner of a hotel and sells the hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt by the chief financial officer showing that the amount has been paid or a certificate showing that no tax is due.
- (b) The purchaser of a hotel who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.
- (c) The purchaser of a hotel may request that the chief financial officer provide a receipt under subsection (a) and issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The chief financial officer shall issue the certificate or statement not later than the sixtieth day after the date that the chief financial officer receives the request.
- (d) If the chief financial officer fails to issue the certificate or statement within the period provided by subsection (c), the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

(Ord. No. 8930, § 1, 3-13-08)

Sec. 16A-23. - Criminal penalties for failure to collect or remit.

If any person shall fail to file a report as required herein, or shall file a false report, or shall fail to pay to the chief financial officer the tax as imposed herein when said report or payment is due, then such person shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00), and each twenty-four (24) hours of any such violation shall constitute a separate offense.

(Ord. No. 8930, § 1, 3-13-08)

State Law reference— Penalty for ordinance violations, V.T.C.A., Local Government Code § 54.001.