

Chapter 4.40
ROOM TAX

4.40.010 Definitions.

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

“City” means the City of Saint Paul, Alaska, and includes all of the territory contained within a three nautical (geographical) mile perimeter and lying above the mean low water line surrounding St. Paul Island, Sea Lion Rock, Walrus Island and Otter Island of the Pribilof Group at Latitude 57° 10'N. and Longitude 170° 15'W.

“City manager” means the City Manager of the City of Saint Paul or a designee.

“Department” means the City of Saint Paul’s Finance Department.

“Finance director” means the Finance Director of the City of Saint Paul or a designee.

“Guest” means a person who rents a room whether for use or occupancy by such person or by others, provided, however that "guest" does not include a person, not an operator, acting as an agent for or on behalf of another person to facilitate the room rental and merely transfers rent collected to an operator.

“Hosting platform” means a person or entity that provides a means through which an operator may offer a room for rent. This service is usually provided through an online platform and generally allows an operator to advertise a room for rent through a website provided by the hosting platform and provides a means for a guest to pay rent for the room.

“Operator” means a person who owns, operates, or controls any facility in which there is rented or offered for rent one or more rooms, the rent for which is, or absent an exemption under this chapter would be, taxable under this chapter.

(a) Exempt operator is an operator who has qualified for an exemption under and has fulfilled the requirements of section 4.40.030.

(b) Persons representing themselves to the public as being an operator under this chapter shall be subject to and comply with all the duties and responsibilities of an operator as set forth in this chapter.

“Person” means an individual, firm, partnership, consortium, joint venture, association, commercial entity, social club, fraternal organization, corporation, estate, trust of any type, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, any governmental entity (foreign government, United States Government, State of Alaska or other state, municipality), commission, or any other group or combination of persons acting as a unit.

“Rent” is the monetary value of any consideration, whether money, property, or services, given in exchange for the right to use or occupy a room.

“To rent or rent (in any conjugation of the verb form) a room” means to provide or obtain the right to use or occupy a room in exchange for rent.

“Room” means an integral space confined by walls and one or more doors, within a facility or structure, which is rented or offered for rent for use as a residence, dwelling, place for sleeping,

place of lodging, recreation or other use auxiliary to such residential, dwelling, sleeping, lodging or recreational use; provided however, that "room" shall not include any lodging space for sleeping purposes used exclusively as part of a business, such as a hospital or university dormitory, whose primary purpose is other than providing meals, lodging, entertainment or recreation.

“Tax return” means the quarterly report to be submitted to the department as required by section 4.40.090.

4.40.020 Levy, payment, collection, and distribution of tax revenues.

(a) Subject to the provisions of this chapter, there is hereby levied a tax on all room rents in an amount equal to 12 percent (12%) of the room rent paid to an operator.

- (1) The guest shall pay the tax to the operator at the time the rent is paid, provided however, that tax paid on rents which subsequently qualify for an exemption from this tax shall be refunded by the operator to the guest and shown as a credit on the guest's bill.
- (2) The operator shall collect the tax when the operator collects the rent and shall state the tax as a separate item on the guest's bill.

4.40.025 - Tax exemptions.

(a) The following rents are exempt from the tax levied by section 4.40.020:

- (1) Rent paid directly by the United States or state insofar as they are immune from taxation;
- (2) Rent paid directly by a guest who is an officer or employee of a foreign government or by such guest's foreign government employer which is exempt from taxation by law or treaty;
- (3) Rent paid for the use or occupancy of a room or rooms by the same person or persons for 30 or more consecutive days. As used in this subsection 4.40.025(a)(3), "person" means only natural persons;
- (4) Rent paid to an exempt operator, provided the operator collecting the rent has established its exemption in accordance with section 4.40.030.

(b) As used in this section, "rent paid directly" means payment is made by voucher, check, warrant, or other negotiable instrument made payable to the operator and issued from an account maintained by the person or entity entitled to the exemption or by a bill, invoice, purchase order, or other form of payment arrangement made directly between the operator and the person or entity entitled to the exemption. A right of reimbursement to the guest from the person or entity entitled to the exemption does not constitute a direct payment.

4.40.030 Operators exempt from collecting the tax and/or other specified requirements.

(a) When qualified for exemption in accordance with this subsection, an operator exempt from federal income taxation under 26 USC § 501(c)(3), whose income from room rents is not

unrelated business taxable income under 26 USC § 512, is exempt from collecting the tax levied by this chapter.

- (1) An operator qualifies for exemption under subsection A. of this section by registering as an operator under section 4.40.040, and presenting evidence satisfactory to the finance director that the United States Internal Revenue Service has determined that the operator is exempt from federal income taxation under 26 USC § 501(c)(3), and its income from room rents is not unrelated business taxable income under 26 USC § 512.
 - (2) An operator that has qualified for exemption under this section shall report to the finance director in writing any final determination by the United States Internal Revenue Service affecting or revoking the operator's exemption under 26 USC § 501(c)(3) within 30 days after receiving notice thereof.
- (b) An operator who exclusively rents or offers to rent a room or rooms solely as the non-transient residence of the occupant for 30 or more consecutive days shall be exempt from the requirements of this chapter for obtaining and displaying a certificate of registration, collecting the tax levied and filing tax returns.

4.40.040 Operator's certificate of registration.

- (a) *Required; display.* Except as otherwise provided in this chapter, every operator shall obtain a certificate of registration for each location at which such business is conducted prior to renting or offering to rent a room or rooms. Operators shall display their certificate of registration in conspicuous places where it can be readily viewed by guests at the registered place of business.
- (b) *Application.* Application for a certificate of registration for each location at which an operator conducts business shall be made to the finance director on a form provided by the department containing such information as the department may require. There shall be no charge for issuing a certificate of registration.
- (c) *Contents.* A certificate of registration shall bear the name of the operator, the address of the registered place of business, and the operator's form of business organization, and state whether the operator is exempt from collecting the tax under section 4.40.030.
- (d) *Expiration.* If an operator ceases to engage in business as an operator, ceases to engage in business at its registered place of business, changes its name, changes the name by which the registered lodging facility is advertised or marketed by the operator, changes its form of business organization, or ceases to be exempt from collecting the tax under section 4.40.030, its certificate of registration expires. An operator shall surrender an expired certificate of registration to the finance director for cancellation.
- (e) An applicant applying for a certificate of registration under this chapter shall provide security for its fiduciary performance in accordance with section 4.40.060. Evidence of such security shall be submitted to the department with the application.
- (f) The department may refuse to issue a certificate of registration if there is reasonable cause to believe that the applicant has structured its business organization to avoid payment of delinquent taxes, penalties, interest, or costs due under this chapter; has willfully withheld information requested to determine the applicant's eligibility to receive a certificate; or there is

reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

4.40.050 Registered hosting platforms.

(a) *Registration, collection, and remittance required.* Every hosting platform that agrees to accept room rental payment from a guest pursuant to section 4.40.020, subject to exemption rules specified in section 4.40.050(a)(1), shall obtain a certificate of registration prior to offering services to operators subject to this chapter, and shall collect room tax and remit the tax to the department on behalf of all operators for which it provides this service.

(1) Exemptions.

(i) The following rules apply to exemptions from subsection A:

a. Branded hosting platforms used exclusively for a particular hotel brand and its affiliates are exempt from registration.

b. Tour companies, travel booking agents, and wholesale room sellers are exempt from room tax collection and remittance to the department for each room rental transaction meeting the following criteria:

c. Sales of room nights for stays at an operator's individual property with ten or more rooms that is properly registered with the city, per the department's list of registered operators; and

d. Collection of room tax and payment of funds to the registered operator, either through direct transfer or subsequent billing from the registered operator.

(2) Any hosting platform subject to subsection (a) that is wholly involved in room rental transactions covered by this subsection (a)(1). shall not be required to register, collect, and remit room tax to the department.

(b) *Application.* Application for a certificate of registration shall be made to the finance director on a form provided by the department containing such information as the department may require. There shall be no charge for issuing a certificate of registration.

(c) *Responsibilities.* An operator who uses a registered hosting platform as the sole method for renting or offering for rent a room shall not be subject to this chapter to the extent the registered hosting platform performs the responsibilities of an operator, with the exception of section 4.40.130, maintenance and inspection of records.

(d) A hosting platform applying for a certificate of registration under this chapter shall provide security for its fiduciary performance in accordance with section 4.40.060. Evidence of such security shall be submitted to the department with the application.

(e) Taxes collected by a registered hosting platform pursuant to this chapter shall vest in the city upon collection. The hosting platform has a fiduciary duty to the city for these taxes. The taxes shall be segregated from the hosting platform's funds, at least by book account, and held in trust for the exclusive benefit of the city until remitted to the city.

(f) A registered hosting platform is not required to submit informational returns in accordance with section 4.40.080.

(g) A registered hosting platform shall submit tax returns and remit tax payments in accordance with sections 4.40.090 and 4.40.100, except that the tax return shall set forth or include the aggregate amounts of all rents earned by and taxes due from the operators who use the hosting platform to rent or offer to rent rooms through the hosting platform. To the extent a hosting platform collects taxes on behalf of an operator, the operator's liability for those taxes shall be deemed satisfied.

(h) A registered hosting platform shall obtain and preserve evidence sufficient to support all room rental transactions subject to this chapter and all claimed exemptions from payment, collection, or remittance of the room taxes under this chapter in accordance with section 4.40.130. To the extent a hosting platform may assign anonymous account numbers to operators using the hosting platform, when inspecting records the department shall inspect the required records in an anonymized fashion, unless the department has obtained a release of information from the operator or an order to produce identifiable operator information issued through a binding legal process.

(1) A registered hosting platform is not subject to section 12.20.090, tax lien.

(2) Except as expressly provided for in this section, a hosting platform is subject to all other provisions of this chapter.

4.40.060 Security for fiduciary performance.

(a) *Guarantee required.* To ensure that an operator performs its fiduciary responsibility to timely collect, account for, safeguard, and remit taxes levied by this chapter, the operator shall provide a guarantee by one or more of the methods specified in this section. The amount of the guarantee shall be in an amount that the finance director determines to be 12 percent of the estimated average annual taxable room rental revenues for the registered facility, or \$5,000.00, whichever is higher. Except as specified in subsection (c). of this section, the requirement for a guarantee shall remain in force for the entire period the applicant is registered as an operator in accordance with section 4.40.040. A certificate of registration shall be automatically revoked when the operator's required guarantee lapses, is not renewed, expires, is modified without the written consent of the finance director, is cancelled, or is otherwise terminated. In the event the city exercises a claim against the guarantee, the operator shall provide an additional guarantee, in an amount equal to the amount of the paid claim, no later than 30 days after the date such claim was paid or its certificate of registration shall be automatically revoked.

(b) Once an operator has filed a tax return and remitted the full amount of taxes due under this chapter, by the due date prescribed by this chapter, for each of eight consecutive calendar quarters, the operator may submit a written request to the finance director for a waiver of the requirement for the operator to post a guarantee. Except as listed below, the finance director shall provide written approval of such request, stating the date the requirement for a guarantee shall expire.

(1) The finance director shall not approve the operator's request and the requirement for a guarantee shall not expire when the operator has had any certificate of registration previously issued under this chapter revoked by the department.

(2) The finance director shall not approve the operator's request and the requirement for a guarantee shall not expire when the department has reasonable cause to believe that the operator is a related party or related entity to another operator or prior operator whose certificate of registration has previously been revoked under this chapter.

(c) The agreement or contract and other evidence of a guarantee under this section is subject to inspection by the department.

(d) Security for fiduciary performance under this section may be waived for an operator having three or fewer rooms for rent provided the operator files a tax return and remits the full amount of tax due by the due dates prescribed in this chapter.

4.40.070 Tax receipts segregated and held in trust for the city.

(a) Title to taxes collected pursuant to this chapter shall vest in the city upon collection. The operator has a fiduciary duty to the city for these taxes. The taxes shall be segregated from the operator's funds, at least by book account, and held in trust for the exclusive benefit of the city until remitted to the city.

4.40.080 Informational returns.

(a) Within 30 days after the end of each month, an operator offering 30 or more rooms for rent shall submit an informational return to the department, in a format acceptable to the department, to include the amount of gross rents, non-taxable rents, and taxable rents earned during the preceding month. This additional reporting requirement shall not change or otherwise affect the quarterly requirement to file a timely tax return and remit room taxes to the department as set forth in section 4.40.090(a).

4.40.090 Tax returns and remittance.

(a) Within 30 days after the end of each month, every operator not exempt under this chapter shall submit to the department a tax return, signed by the operator(s), on a form provided by the department for each registered place of business regardless of whether taxes are due or reported rents are taxable. Each operator shall remit therewith all taxes due from such operator pursuant to this chapter during the immediately preceding calendar quarter. Tax returns and taxes due under this chapter must be actually received by the department within the time required by this section.

(1) The tax return shall set forth or include:

- (i) Whether the cash basis or accrual basis accounting method is used to report rents earned;
- (ii) The aggregate amount of all rents earned by the operator for rooms within the city;
- (iii) The amount of non-taxable rents earned;
- (iv) The amount of taxable rents earned;
- (v) The amount of taxes due; and

(vi) Such other relevant information and supporting documents as the department may require.

(2) As used in subsection (a)(1). of this section, "rents earned" means rent revenue recognized on the operator's books of account in the legitimate and normal and ordinary course of the operator's business. An operator must elect to report rents on an accrual basis or a cash basis method of accounting. Once adopted, an operator's method of reporting rents shall not be changed without prior written approval of the chief fiscal officer. Generally, cash basis operators recognize rents as earned when the rent is actually collected and accrual basis operators recognize rents as earned when the rental transaction occurs regardless of when payment is actually received.

(b) *Involuntary return.* If an operator fails to file a tax return as required by this section or if the finance director finds that a tax return is not supported by the records required to be maintained under this chapter by the operator filing the tax return, the finance director may prepare and file a tax return on behalf of the operator. Taxes estimated on a tax return filed on behalf of an operator under this subsection may be premised upon any information that is available to the finance director including, but not limited to, comparative data for similar businesses. An operator for whom an involuntary tax return is filed under this subsection shall be liable for the taxes stated on the tax return, as well as all penalties and interest provided for in this chapter.

(1) The department shall notify the operator(s) of determinations made under this section and include in such notice the basis of the department's calculations determining the operator's liability together with a notice of the operator's rights under section 4.40.200, that payment is due immediately and that taxes, interest, penalties and costs continue to accrue from the date taxes were due under this chapter for the period(s) covered by the determination.

(2) Unless otherwise determined by the finance director in a decision under section 4.40.200(b), taxes due under this section shall be payable immediately.

(3) Taxes determined under this section shall be due on the same date as if a tax return had been filed by the operator or owner in accord with this chapter and interest, penalties and administration costs thereon shall accrue from such due date.

(4) A tax return prepared by the finance director is prima facie evidence of taxes due, and the penalties and interest accruing from said tax liability. In an application for, or during a hearing under, section 4.40.200, it is the operator's burden to rebut the presumed sufficiency of a tax return prepared by the department.

(c) Notwithstanding anything contained in this chapter to the contrary, within ten days after ceasing to be an operator, the operator shall:

(1) Surrender its certificate of registration;

(2) Notify the finance director in writing of the date on which and the name, telephone and address of any person to whom the business described in the returned certificate of registration has been leased, conveyed or otherwise relinquished or transferred together with the date on which the person executing the returned certificate ceased doing business as an operator; and

(3) File a final tax return for the period subsequent to the operator's last tax return together with all taxes collected and other payments due in the manner required for filing tax returns, remitting taxes collected and payment of other sums due under this chapter.

(d) *Responsibility of corporate officers and directors.* It shall be the responsibility of every director and/or corporate officer of a corporation owning, operating, or controlling a facility registered under this chapter to ensure that timely and proper tax returns are filed and the related taxes due under this chapter are remitted to the department on behalf of the corporation. A director and/or corporate officer may be held personally liable for failing to timely:

- (1) File a proper tax return; or
- (2) Remit taxes due.

(e) *Responsibility of members of a limited liability company.* It shall be the responsibility of every member of a limited liability company owning, operating, or controlling a facility registered under this chapter to ensure that timely and proper tax returns are filed and the related taxes due under this chapter are remitted to the department on behalf of the limited liability company. A member of a limited liability company may be held personally liable, to the extent provided by law, for failing to timely:

- (1) File a proper tax return; or
- (2) Remit taxes due.

4.40.100 Amended tax returns.

(a) Any tax return filed under sections 4.40.090(a) or 4.40.090(c) may be amended by the operator.

4.40.110 Application of payments.

(a) Any payment submitted to the department for taxes, interest, penalties or costs due under any tax return, provision of this chapter, or any finding or determination by the department under this chapter shall be credited to the tax period for which remitted, but shall be credited first to the payment of costs and then to the payment of penalties, interest, and taxes due for such tax period in that order.

4.40.120 Confidentiality of records.

(a) All tax returns filed under this chapter, all data obtained from such tax returns, and all financial information obtained from an inspection of records in accordance with this chapter are confidential and may not be released except upon court order, when necessary to enforce the provisions of or to collect the taxes due under this chapter and except for inspection by the mayor, the chief fiscal officer, the municipal attorney, the internal auditor or city council in the performance of their official duties.

(b) Except when necessary to the performance of their official duties to enforce the provisions of or to collect taxes due under this chapter, no person may divulge to another any

information, data or financial information of an operator, an operator's records or a tax return filed under this chapter unless the person receiving such information, data or financial information is a person authorized by this chapter to inspect the tax return, information, data or financial information.

(c) It is the duty of the finance director to safely keep tax returns, all data taken therefrom, and all financial information obtained from an inspection of the operator's records secure from public and private inspection except as provided by this chapter.

(d) This section does not prohibit the city from compiling and publishing statistical information concerning the data submitted provided no identification of tax returns or operator information, data or financial information is made.

4.40.130 Maintenance and inspection of records.

(a) It shall be the responsibility of the operator to obtain and preserve evidence sufficient to support all room rental transactions subject to this chapter and all claimed exemptions from payment, collection, or remittance of the room taxes under this chapter. Specification in this chapter of the records to be kept by an operator shall not relieve the operator of its responsibility to keep sufficient records. Unless a longer period is ordered by the finance director under section 4.40.140 or a court of competent jurisdiction, an operator shall keep and preserve in the city at least the following minimum records for two calendar years after the end of the year in which created:

(1) All occupancy registers and accounting records reflecting the rental of each room for which the operator received rent, and the rents received therefor including as a minimum, but not limited thereto, the following:

(i) The name, address, date of arrival, date of departure, room rate charged, method of payment, and payment amount for each guest, as recorded on the guest folio or otherwise;

(ii) All periodic statements from financial institutions provided to the operator for accounts in which room rents or room rent taxes were deposited;

(iii) All periodic statements provided to the operator from credit card or debit card processors containing details of guest payment transactions of room rents or room rent taxes; and

(iv) All summary reports and compilation schedules prepared by the operator to produce the totals reported on the tax returns filed in accordance with this chapter.

(2) Evidence relied upon by an operator to support the operator's decision to not collect the tax required by this chapter including as a minimum, but not limited thereto, the following:

(i) All the information and records required under subsection (a)(1) of this section;

(ii) A record of the method of payment when the exemption is claimed for a room; and

(iii) In the case of a claimed foreign government employee exemption as provided in this chapter, a copy of the diplomatic passport or other identification which shows the diplomatic status/employment of such guest and which shall be attached to the guest record or otherwise cross referenced to that guest record; and

(v) Copies of documents which demonstrate "rent paid directly" or copies of bills, invoices, purchase orders or other payment arrangement made directly between the operator and the person or entity by which the rent was "paid directly." An operator shall cross reference the appropriate guest record with the evidence of direct payment which qualifies for an exemption by attaching a copy of the supporting evidence to the guest record or by reciprocal notations on the affected guest record and on the evidence supporting such an exemption; and

(3) Such other records, documents and information as the department may require by regulation or notice to the operator reasonably necessary and convenient to its administration and enforcement of this chapter.

(b) Any person who, for a fee, performs a service for a lodging facility in the city by making or offering to make a room reservation for a guest to that lodging facility, or who collects room rent from a guest, shall keep and maintain within the city and make available for inspection by the department upon request at least the following records for not less than two calendar years after the end of the calendar year in which such records are created, unless a longer period is ordered by the finance director under section 4.40.140 or by a court of competent jurisdiction:

(1) All reservation and accounting records reflecting the rents and room rent taxes collected;

(2) The name and contact information of guests, the dates rooms are rented to each guest, each rental rate for rooms rented; the room rent tax amount for each room rented; identification or location of each room rented; and

(3) The name of the person controlling the rooms and receiving rents for the rooms rented and the aggregate dollar amount due or paid to such person.

(c) During normal business hours, the finance director or a designee may, upon presentation of proper identification, inspect the records which an operator is required to maintain under subsection A. of this section, or inspect the records of a person whom the finance director has probable cause to believe is an operator to determine whether that person is an operator.

(1) Upon notice of the department's intent to inspect records, an operator shall retain such records and preserve their availability to the department until released by the department in writing, regardless of whether such retention and preservation continues beyond the two-year period specified in this section.

(2) The finance director's authority to inspect records shall not be limited to records within the two calendar year retention period. If an operator has possession or control of records described in subsection A. or B. that are older than the two-year period specified in this section, the operator shall make such records available for inspection upon request.

(d) The operator shall make available for inspection within the city, all records required to be kept and preserved by this chapter. Records older than the two calendar year retention period

specified in this section shall not be barred from discovery under court or administrative rules on relevance or admissibility grounds solely based on the age of the records.

(e) Where the Constitution of the United States or of the state so requires, the finance director shall obtain an administrative search warrant authorizing an inspection and exhibit the warrant to the person in charge of the premises before conducting the inspection. The finance director shall apply to the trial courts of the state to obtain an inspection warrant, stating in the application the name and address of the premises to be inspected, the authority to conduct the inspection, the nature and extent of the inspection, and the facts and circumstances justifying the inspection. Warrants issued under this section shall be returned within ten days.

4.40.140 Tax avoidance.

(a) If the department has reasonable cause to believe that an operator has structured room rent transactions to avoid collecting or remitting the tax levied under this chapter, or has wrongfully deceived its guests or the department for the purpose of financial gain, the department may;

(1) Declare there is a rebuttable presumption that the substance of a specific room rent transaction is a taxable transaction under this chapter and proceed to establish, levy and collect the tax together with costs, penalties and interest as provided for in this chapter; and

(2) Order and require the operator to retain and preserve records identified in section 4.40.130 for not more than six years. If the records do not exist, the department may prepare and file an involuntary return on behalf of the operator, as provided in subsection 4.40.090(b).

4.40.150 Tax lien.

(a) Taxes due and not paid on the date required by this chapter, together with all interest, penalties and administration costs accruing thereafter, shall immediately become a lien in favor of the city upon all of the operator's real and personal property including rights to such property. Such lien shall continue until all taxes, penalties, interest and administration cost due the city have been paid or the lien released in whole or in part.

(1) A separate notice of such lien shall be given each operator liable for the taxes by mail, to the address provided in the application for certificate of registration, and shall be recorded in the Anchorage Recording District, Third Judicial District, State of Alaska and any other recording district the department may choose.

(i) Notice of the lien shall specify the taxpayer(s) liable for payment of the tax, the amount of taxes and the date they were due, a statement of the interest, penalties and administration costs accrued and which may thereafter accrue, the tax period for which the taxes were due and such other information as the department may determine or as may be required by law.

(2) No failure or defect in the notice of lien, except as to amount if different than the recording thereof, shall adversely affect the existence or priority of the lien created under

this section to the extent of the correct amount which is the same or less than that stated in the recorded lien.

4.40.160 Collection of taxes.

(a) Taxes, interest, penalties, and administration costs due under this chapter and unpaid may be collected by a civil action for the collection of a debt, by executing a claim against security provided under section **4.40.060**, by foreclosure of the tax lien in accordance with AS 09.45.170 through 09.45.220 or similar statutes in substitution thereof, or by any combination of the above.

4.40.170 Prohibited acts.

(a) In addition to other acts and omissions prohibited by this chapter:

(1) No person may fail or refuse to pay the tax imposed by this chapter when it is due and payable to an operator authorized to collect the tax.

(2) An operator may not advertise or state to the public or to any guest or renter directly or indirectly that the tax or any part of it will be assumed or absorbed by the operator or that the tax will not be added to the rental or that it will be refunded except as provided in this chapter. An operator may not absorb or fail to add the tax or any part of it or refund any tax or fail to state the tax separately to the renter or guest.

(b) No person may engage in business as an operator without obtaining a certificate of registration under this chapter.

(c) No operator shall deny the chief fiscal officer, subsequent to identification during normal business hours, access to the operator's required records for purposes of inspection under this chapter.

(d) No person or operator shall charge or collect tax in excess of the proper amount of tax due under this chapter.

4.40.180 Interest.

(a) In addition to any penalties imposed by this chapter, interest at the rate of 10 percent per annum shall accrue and be due from the operator on the unremitted balance of taxes after the date on which their remittance was due.

4.40.190 Penalties.

(a) An operator who fails to file a tax return within seven calendar days following its due date shall automatically incur a civil penalty for each tax return not filed equal to ten percent of the taxes actually due the city. An operator who fails to remit the full amount of any tax due within seven calendar days following its due date shall incur and pay a civil penalty of ten percent of the actual amount of taxes due but remaining unpaid after such date. If a person fails to pay the full amount of the tax due or file a tax return or report required under this chapter

within 16 calendar days after its due date, each of the aforementioned civil penalties shall be increased from ten percent to 25 percent.

- (1) The penalty shall be computed on the unpaid balance of the tax liability as determined by the department.
 - (2) The penalties provided for in this subsection shall be in addition to all other penalties and interest provided for under this chapter.
- (b) An operator who willfully fails to collect the tax levied by this chapter shall incur a civil penalty equal to twice the amount of the tax which should have been collected.
- (c) The department may revoke a certificate of registration issued under this chapter for any violation of this chapter.
- (d) A managing member, officer, director, and owner of an enterprise engaged in business as an operator without a certificate of registration issued under this chapter is personally liable for all taxes which should have been collected and remitted to the city plus a penalty equal to 25 percent of the tax which should have been collected in addition to all costs, taxes, interest and other penalties due under this chapter. The municipal attorney may petition the court for injunctive relief against a person engaged in business as an operator without a certificate of registration issued under this chapter.
- (e) Except an operator who fails to file a tax return and remit taxes when due but does so within 16 calendar days thereafter, a person who fails to remit taxes due under any provision of this chapter is subject to criminal prosecution and to the penalties therein.
- (f) Civil and criminal penalties shall be cumulative remedies and shall not relieve an operator or guest of the duties imposed under this chapter.
- (g) Any person who violates any provision of this chapter shall be liable for a civil penalty of up to \$1,000.00 for each separate violation. Where multiple instances of the same violation occur, each instance shall constitute a separate violation.
- (h) An operator that has failed to file a tax return or remit the taxes due to the city by the due date for three consecutive quarters may be required by the department to file tax returns and remit taxes due at the end of each month within 30 days after the end of the month being reported. If the operator subsequently files tax returns and remits taxes due for 12 consecutive months without incurring penalties and interest, the department may allow the operator to resume filing tax returns and remitting taxes quarterly.

4.40.200 Remedies for a person aggrieved.

- (a) Any person aggrieved by any action or determination of the department under this chapter may apply to the department and request a hearing before the finance director on the department's action or determination within 30 days from the date the department mails notice of the department's action or determination.
- (1) An application for a hearing must notify the department of the specific action or determination complained of and the amount of tax, interest, cost or penalty contested and the reason for such contest.

- (2) The uncontested portion of any tax due under this chapter shall be paid when due regardless of any application for a hearing. Payment of the total amount due may be made at any time before the hearing. If the department has reasonable cause to believe that collection of the total amount due might be jeopardized by delay, immediate payment of the total amount may be demanded and the department may pursue any collection remedies provided by law. Payment in full does not affect a person's right to a hearing.
- (b) Upon timely application for a hearing under subsection (a) of this section, the finance director shall hold a hearing and render a decision to determine whether a correction or reversal of the department's action or determination is warranted.
- (1) If a person requesting a hearing fails to appear at the hearing, the finance director may issue a decision without taking evidence from that person, unless the person shows reasonable cause for failure to appear within seven days after the date scheduled for the hearing.
- (c) Within 30 days after receipt of a written decision by the finance director, a person aggrieved by the decision may appeal the decision to the Superior Court of the Third Judicial District.
- (1) The person aggrieved shall be given access to the department's file in the matter for preparation of such appeal.
- (2) Taxes, costs, penalties, and interest declared to be due in the decision of the finance director must be paid within 30 days after the date of the decision or a supersedeas bond guaranteeing their payment must be filed with the court in accordance with Alaska Court Rules of Appellate Procedures.
- (d) If after the appeal to the Superior Court is heard it appears that the action or determination of the department and/or the decision of the finance director was correct, the court shall confirm such action, determination or decision, as the case may be. If the department's action or determination or the decision of the finance director 's decision was incorrect, the court may determine the proper action, determination or decision. If the person aggrieved is entitled to recover all or part, of any tax due or paid, the court shall order the repayment and the department shall pay such amount within 14 days and attach a certified copy of the judgment to the payment.
- (e) Hearings before the finance director under this chapter may, at the option of the finance director, be conducted by the city manager. If the finance director refers such matter to the city manager, the city manager shall conduct the hearing and prepare findings and conclusions. These findings and conclusions shall be forwarded to the finance director for adoption, rejection or modification and issuance of a final order or decision by the finance director.

4.40.210 Administrative policy.

- (a) The city manager may adopt policy providing for the application and interpretation of this chapter and providing methods and forms for reporting and collecting the taxes imposed by this chapter.

4.40.220 Refunds.

- (a) If the department determines after audit that an operator's remittance exceeds the actual amount due, the department, upon written request by the operator, shall refund the excess amount to the operator without interest.
- (b) The operator shall apply for a refund in writing on a form provided by the department not later than two years from the date the excess payment was transmitted to the department. Any claim for refund filed more than two years after the date of the excess payment is forever barred. For purposes of this section, a refund means payment by the city to the operator or book entry by the city to offset other current or future amounts due from the operator.
- (c) If an operator discovers that it has miscalculated the tax, and the person who rented a room paid more tax than should have been collected, the operator shall refund to the renter the excess amount collected. If the operator has not located the renter and refunded the excess tax collected, the excess tax shall be remitted to the city pursuant to section 4.40.090.