

# Chapter 12

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## Collection of Tax on Overnight Lodging

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### Sec. 7-12-1      **Definitions**

In this chapter the following shall apply:

*Gross Receipts* means the total amount of the sale, lease, or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise.

*Hotel and Motel* have the meaning as defined in Sec. 77.52(2)(a)1., Wis. Stats.

*Lodging Marketplace* means an entity that provides a platform through which an unaffiliated third party offers to rent a short-term rental to an occupant and collects consideration for the rental from the occupant.

*Municipality* means the Town of Westport.

*Occupant* means a person who rents a short-term rental through a lodging marketplace.

*Owner* means the person who owns the residential dwelling that has been rented.

*Payor* means the person or entity who owes that tax imposed by this ordinance.

*Residential Dwelling* means any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining common household, to the exclusion of others.

*Room Tax* means the tax imposed by this ordinance.

*Short-term Rental* means a residential dwelling that is offered for rent for a fee and for fewer than 29 consecutive days.

*Tourism* has the meaning as defined in Sec. 77.52(2)(e), Wis. Stats.

*Transient* has the meaning as defined in Sec. 77.52(2)(a)1, Wis. Stats.

*Tourism Entity* means a nonprofit organization that spends at least 51 percent of its revenues on tourism promotion and tourism development, and provides destination marketing staff and services for the tourism industry in a municipality.

*Tourism Promotion and Development* has the meaning defined in Sec. 66.0615(1)(fm), Wis. Stats.

## **Sec. 7-12-2            Imposition of Room Tax**

Pursuant to Sec. 66.0615, Wis. Stats., a tax is hereby imposed on the privilege and services of furnishings, at retail, except sales for resale, rooms or lodging to transients by hotel keepers, motel operators, lodging marketplaces, owners of short-term rentals, and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations. The tax shall be at the rate of 5 percent of the gross receipts from such retail furnishings of rooms or lodgings. The tax shall not be subject to the selective sales tax imposed by Sec. 77.55(2)(a)1, Wis. Stat. The tax may not be imposed upon sales to the federal government and persons listed under Sec. 77.54(9a), Wis. Stats.

## **Sec. 7-12-3            Distribution of Room Taxes Collected**

Upon receipt of the room taxes that are collected, the municipality shall distribute 88 percent of the room taxes to the Tourism Commission.

## **Sec. 7-12-4            Creation and Duties of Tourism Commission**

- (a) The Tourism Commission shall consist of 5 members, one of which shall be a Town Board member, who shall be appointed by the Town Board Chair with approval of the Town Board. The Tourism Commission shall have at least one owner and/or operator representative of the

local lodging industry. Each member's term shall be for a one year period and each member may serve multiple terms. The Tourism Entity shall appoint a representative to serve as an ex-officio member. This ex-officio member will not be counted towards purposes of determining a quorum.

- (b) Annually the Tourism Commission shall elect a chairperson from its members to serve a one-year term. The Tourism Commission shall meet as needed as determined by the Commission Chair and should meet no less than 4 times a year.
- (c) The Tourism Commission shall report annually to the municipality providing the room tax revenue and the purposes for which the revenues were spent.
- (d) The Tourism Commission shall contract with a Tourism Entity which develops the marketing plan including budgets for room tax revenues for promotion and development.
- (e) The Tourism Commission shall give broad direction to the Tourism Entity on the development of the marketing budget.
- (f) The Tourism Entity shall submit meeting minutes after each meeting and a room tax marketing plan to the Tourism Commission for review and approval annually.
- (g) The Tourism Commission and Entity with whom it contracts shall not use any of the room tax revenue to construct or develop a lodging facility.

### **Sec. 7-12-5 Tracking and Reporting Room Tax Revenue Expenditures**

- (a) The Tourism Entity shall track the use of room tax revenue expenditures and state its impact on generating paid overnight stays in the community.
- (b) The Tourism Entity shall permit and shall allow inspections of its records pertaining to the use of the room tax funds upon request of the Tourism Commission at reasonable times.
- (c) The Tourism Entity shall provide a written report as determined by the Tourist Commission, no less than annually, and such report shall be available to the municipality and general public upon request.

### **Sec. 7-12-6 Collection of Tax**

- (a) The Collection of tax imposed by this Chapter shall be administered by the Town Treasurer. The tax imposed is due and payable on the last day of the month next succeeding the calendar quarters for which imposed. A return shall be filed with the Town Treasurer, by those furnishing at retail such rooms and lodging, on or before the same date on which the tax is due and payable. Such return shall show the gross receipts of the preceding calendar quarters from such retail furnishings of rooms or lodging, the amount of taxes imposed for such period, and such other non-confidential information the Town Treasurer deems reasonably necessary. Annual returns shall be filed on a calendar year basis. Such annual return shall be filed within 90 days of the close of each calendar year. The annual return shall summarize the quarterly returns, reconcile and adjust for errors in the quarterly returns, and shall be made on forms as prescribed by the Town Treasurer. All such returns shall be

signed by the person required to file a return or his/her duly authorized agent, but need not be verified by oath. The Town Treasurer may, for good cause, extend the time for any return, but in no event longer than one month from the filing date.

- (b) The correct amount of tax shall accompany each quarterly tax return and be made payable to the municipality.

### **Sec. 7-12-7 Sale or Conveyance of Business**

If any person liable for any amount of tax under this section sells out their business or stock of goods or quits the business, their successors or assigns shall withhold sufficient funds from the purchase price to cover such amount until the former owner produces a receipt from the Town Treasurer that it has been paid or a certificate stating that no amount is due. If any person subject to the tax imposed by this section fails to withhold such amount of tax from the purchase price as required, they shall become personally liable for payment of the amount required to be withheld by them to the extent the price of the accommodations valued in money.

### **Sec. 7-12-8 Determination of Tax by Audit**

- (a) The Town Treasurer may, by office audit, determine the tax required to be paid to the municipality or the refund due to any person under this Chapter. This determination may be made upon the basis of the facts contained in the return being audited or on the basis of any other information within the Town Treasurer's possession. One or more such office audit determinations may be made out of the amount due for anyone or for more than on period.
- (b) The Town Treasurer may, by field audit, determine the tax required to be paid to the municipality or the refund due to any person under this Chapter. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information within the Town Treasurer's possession. Whenever the Town Treasurer has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, the Town Treasurer is authorized to examine and inspect the financial records pertaining to the furnishing of accommodations at the establishment in question in order to verify the tax liability of that person or of another person.

### **Sec. 7-12-9 Failure to File Room Tax Return**

If any person fails to file a return by this chapter, the Town Treasurer shall make an estimate to the amount of the gross receipts under section 7-12-6. Such estimate shall be made for the period for which such person failed to make a return and shall be based upon any information which is in the Town Treasurer's possession or may come into his/her possession. On the basis of this estimate, the Town Treasurer shall compute and determine the amount required to be paid to the municipality. One or more such determinations may be made for one or more than one period of time.

**Sec. 7-12-10 Forfeiture Relating to Failing to Comply with a Request to Inspect and Audit the Person’s Financial Records and Failing to File Returns Timely**

- (a) A forfeiture, not to exceed 5 percent of the room tax, may be imposed on a person who fails to comply with a request to inspect and audit the person’s financial records.
- (b) Require the person who is subject to pay an amount that is due to pay said tax plus interest at the rate of one percent per month on the unpaid balance. No refund or modification of the payment determined may be granted until the person files a correct room tax return, and permits the municipality to inspect and audit his or her financial records.
- (c) A forfeiture, not to exceed 25 percent of the room tax due for previous year or \$3,000 whichever is less, of the tax, may be imposed in the event that the room tax is not paid.

**Sec. 7-12-11 Record Keeping Requirements**

Every person liable for the tax imposed by this ordinance shall keep or cause to be kept such records, receipts, invoices and other pertinent papers to the payment of room taxes in such form as the Town Treasurer requires.

**Sec. 7-12-12 Confidentiality**

- (a) All tax returns, schedules, exhibits, writings, or audit reports relating to such returns, on file with the Town Treasurer are deemed to be confidential, except the Town Treasurer may divulge their contents to the following and no others:
  - (1) The person who filed the return.
  - (2) The Town Treasurer or other persons for use in the discharge of the duties of their office (unless otherwise prohibited by law), or by order of a court.
- (b) No persons having an administrative duty under this section shall make known in any manner the business affairs, operations, or information obtained by an investigation of records or any person on whom a tax is imposed by this chapter, or the amount of source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof to be seen or examined by any person, except as otherwise provided in this chapter.

**Sec. 7-12-13 Exemptions**

For the tax year (current year), any person or business otherwise required to file a return and make payment to the municipality under this chapter will be allowed an exemption from the requirement to collect and pay room tax for any signed contract dated prior to the adoption of this chapter in which the contract guarantees the lodging rates. This exemption shall expire on August 31, 2019.