

AMENDEDED
ORDINANCE
OF
FANNIN COUNTY,
A POLITICAL SUBDIVISION
OF THE STATE OF GEORGIA

as to

EXCISE TAX – ROOMS, LODGINGS & ACCOMMODATIONS

AN ORDINANCE TO IMPLEMENT TITLE 48, CHAPTER 13, ARTICLE ~~51 (a)(3)~~ OF THE OFFICIAL CODE OF GEORGIA ANNOTATED, - EXCISE TAX ON ROOMS, LODGINGS, AND ACCOMMODATIONS, AND TO PROVIDE FOR THE COLLECTION BY OPERATOR; TO PROVIDE FOR ADMINISTRATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Board of Commissioners of Fannin County, a political subdivision of the State of Georgia, is authorized under ~~O.C.G.A. 48-13-51 (a)(3) to Title 48, Chapter 13, Article 50, Section 1 of the Official Code of Georgia Annotated~~ levy certain excise taxes; and

WHEREAS, the Board of Commissioners of Fannin County, a political subdivision of the State of Georgia, is authorized under ~~O.C.G.A. 48-13-51 (a)(3) Title 48, Chapter 13, Article 50, Section 3 of the Official Code of Georgia Annotated~~ to make available the funds so collected for the purpose of promoting, attracting, stimulating, and developing conventions and tourism in the county; and

WHEREAS, Fannin County, a political subdivision of the State of Georgia is designated as a "special district" pursuant to ~~O.C.G.A. 48-13-51 (a)(3) Title 48, Chapter 13, Article 50.1 of the Official Code of Georgia Annotated~~ for the purpose of implementing an excise tax on rooms, lodging and accommodations; and

WHEREAS, Fannin County, a political subdivision of the State of Georgia implemented an Excise Tax pursuant to a Resolution that was adopted the 27th day of July, 1993 by the Fannin County Board of Commissioners; and

WHEREAS, the options of local citizens having been heard at public meetings call for such purposes;

NOW, THEREFORE, the Board of Commissioners of Fannin County, a political Subdivision of the State of Georgia, resolves to adopt an Excise Tax Ordinance pursuant to said authority; and therefore, the Board of Commissioners of Fannin County, a political subdivision of the State of Georgia does publish, state and promulgate the following ordinance:

I.

This ordinance may be cited as the “Fannin County Lodging Ordinance”.

II.

This ordinance is enacted by virtue of the powers set out in Title 48, Chapter 13, Section 51(a)(3) of the Official Code of Georgia Annotated, as amended.

III.

The purpose of this ordinance is to enact an excise tax upon the furnishing for value to the public of any room or rooms, lodgings or accommodations furnished by any person or legal entity licensed by or required to pay business or occupational taxes to, the county for operating within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin, rental cabin or any other place in which rooms, lodgings, or accommodations are regularly furnished for value.

IV.

Definitions. As used in this ordinance, the following words, terms and phrases shall have the meanings ascribed to them herein, except when the context clearly indicates a contrary meaning.

- a. **Person:** an individual, firm partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust receiver, trustee, syndicate, business entity, or any other group or combination acting as a unit, to include the plural and well as the singular number, excepting, however, the United States of America, the State of Georgia, and any political subdivision of either thereof upon which the governing authority of Fannin County is without power to impose the tax herein provided.
- b. **Operator:** any person operating a hotel/motel (as set out herein) in Fannin County, including, but not limited to, the owner or proprietor of such premises, the lessee, sub lessee, lender in possession, licensee, online travel companies, or any other person otherwise operating such hotel / motel, including private owners who rent or lease private residences for more than two days in any one year.
- c. **Occupant:** any person (or persons utilizing as single unit) who, for a consideration, uses, possesses, or has the right to use or possess, any room or hotel or motel under any lease, concession, permit, right of access, license, agreement or otherwise.
- d. **Occupancy:** the use or possession, or the right to use or possession, of any room or apartment in a hotel or motel, or the right to use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or apartment.

- e. **Hotel/Motel/Cabin/Residence/Lodge:** any structure or any portion of a structure including any lodging house, studio, hotel, motel, motor hotel, auto court, inn, public club, lodge, tourist camp, tourist cabin, rental cabin, tree-house, yurt or private club containing guest rooms and which is occupied, or is intended or designed for occupancy, by guests, whether rent is paid in money, goods, labor or otherwise.
- f. **Guest Room:** a room or rooms occupied, or intended, arranged, or designed for occupancy, by one or more occupants for the purpose of living quarters or residential use.
- g. **Rent:** the considerations or value received in money or otherwise, including all receipts, cash, credits, and property or services of all kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction there-from whatsoever.
- h. **Permanent resident:** any occupant who as of a given date shall have occupied, or has or shall have the right of occupancy, of any guest room in a hotel for at least thirty-one(3190) consecutive days.
- i. **Return:** any return filed or required to be filed as herein provided.
- j. **Due Date:** the twentieth (20th) day after the close of monthly period for which tax is to be computed.

V.

Rate of Levy. There is hereby set and levied on the occupant of a rental accommodationguest room of any hotel/motel/cabin/residence/lodge/guestroom located within the special district a tax in the amount of five per cent (5%) of the gross rent for such occupancy.

VI.

Commencement of Levy. The tax herein imposed shall be paid upon any occupancy occurring on or after January 1, 2012, including, but not limited to such occupancy that was entered into pursuant to a contract, lease or other agreement entered into prior to such date.

VII.

Exemption from Levy. No tax shall be levied pursuant to this ordinance under the following situations:

- a. No tax shall be levied under this Section for the use of meeting rooms.
- b. No tax shall be levied under this Section for the use of any jail cell, detention center or other building where such housing or detention is under legal restraint.
- c. No tax shall be levied under this Section for the use of any hospital medical treatment facility.
- d. No tax shall be levied under this Section upon the fees or charges for any room, lodgings or accommodations furnished for a period of one or more days to the State of Georgia employees or officials when traveling on official business.

- e. No tax shall be levied under this Section upon the fees or charges for any room, lodging or accommodations furnished for a period of one or more days to local government employees or officials when traveling on official business.
- f. No tax shall be levied under this section for rentals over ~~thirty-one ninety~~ (3190) consecutive days.

VIII.

Exemption – Permanent residences. Notwithstanding any other provision of this section, no tax shall be imposed hereunder upon a permanent resident.

IX.

Collection of tax by operator. It shall be the duty of every operator providing lodging accommodations within the unincorporated area of Fannin County to collect the tax on occupants as imposed herein.

X.

Registration of operator. Every person engaging in or about to engage in the business of providing lodging accommodations, as above defined, in the special district shall immediately register said business with the Fannin County Board of Commissioner's Office, as the duly authorized representative of Fannin County, a political subdivision of the State of Georgia. Persons engaged in such business must so register no later than thirty (30) days after the date this section becomes effective, but such grace period for the filing of the registration after the effective date of the tax shall not relieve any person from the obligation of payment or collection of such tax on and after the date of imposition thereof.

- a. The required registration hereunder shall set forth the name under which the operator transacts business or intends to transact business; the location of the place or places of business, the mailing address of the business, the principal contact person at said business and such other information as would facilitate the collection of the tax.
- b. The registration shall be signed by the owner (if a natural person), by an officer (if a corporation) or a partner (if a partnership).

~~c. A separate registration shall be required for each place of business of an operator. However, a realtor offering cabins for rent shall be deemed to be one place of business and shall not require a separate registration for each cabin rented.~~

- ~~d.c.~~ An operator offering more than one cabin or unit for rent under the same federal and state tax identification number shall be required to file the same number of returns as required by the State of Georgia for the filing of state sales tax returns.

XI.

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Certificate of taxing authority. Upon the registration of an operator as hereinabove provided, the Fannin County Board of Commissioners Office shall issue to such operator a certificate of authority to collect the tax on occupant. Each certificate shall state the name and location of the business or person to which it relates.

XII.

Due date and required report. All taxes levied by this Ordinance shall be due and payable to the Fannin County Board of Commissioners monthly, on or before the twentieth (20th) day of every month next succeeding each respective month in which taxes are collected, and payment shall be accompanied by return for the preceding monthly period showing the gross rent, rent from permanent residents, taxable rent, amount of tax collected or otherwise due for a period, and such other information as may be required by the Board of Commissioners Office or governing authority of Fannin County.

In the event that an Operator is permitted under applicable state guidelines to make quarterly sales tax returns to the State of Georgia, said Operator shall be permitted to make quarterly sales tax returns to Fannin County, Georgia. At the time of registration, the Operator shall indicate that he is permitted to make quarterly sales tax returns together with month and day said quarterly returns are due. The failure of the Operator to indicate that he is permitted under applicable state statute to file quarterly reports will infer that monthly reports are due and collectable.

At the time any such report is due, the Operator shall file a copy of the corresponding state sales tax return for the sole purpose of verifying the sums reported and due.

In the event an Operator is permitted under applicable state guidelines to file annual excise, or lodging tax returns, to the State of Georgia, said operator is required to file monthly or quarterly returns for lodging tax to Fannin County, Georgia.

In the event there are no rentals in a reporting period, lodging providers are required to file a return to Fannin County, Georgia stating they had zero rentals for the period.

XIII.

Deposit to general fund. No later than the twenty-fifth (25th) day of each month, the designated representative shall deposit to the General County Fund such excise taxes as have been paid under the provisions of this ordinance, and such funds shall thereafter at the direction of the Board of Commissioners be expended for the promotion of the tourism industry in Fannin County, or such funds at the direction of the Board of Commissioners of Fannin County, Georgia, may otherwise be expended for the purpose of promoting tourism, conventions and trade shows as provided by statute.

XIV.

Collection fee allowed operators. Operators collecting the tax levied hereunder shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a

deduction in submitting, reporting, and payment of the amount due. The rate of the deduction shall be three percent (3%) of the amount due, but only if the amount due was not delinquent at the time of payment.

XV.

Penalty and Interest. The operator, in the event of operator's failure to pay tax when due, shall pay a penalty of fifteen percent (15%) of the amount due plus interest on the total amount of delinquent taxes at the rate of eight and one-half (8.5%) per annum. In addition, the operator shall not be entitled to the fee allowed in Article XIV of this Ordinance. The late penalty will be strictly enforced.

XVI.

- (a) If any operator fails to file a return as required under the provisions of this section, the County shall make an estimate of the amount of gross rentals which are subject to the tax. The estimate shall be made for the period or periods in which the operator failed to file the return and shall be based upon any information which is or may come into the possession of the County.
- (b) The Board of Commissioners of Fannin County, a political subdivision of the State of Georgia or its designated representative(s) shall give to the operator written notice of determination as herein provided. The notice may be served personally or by mail; if by mail such service shall be addressed to the operator at his/her/its last known address as it appears on any of the County's records. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee.
- (c) The amount of the determination made hereunder shall bear interest at the rate of three-fourths of one percent per month, or a fraction thereof, from the twentieth day of the month following the monthly period for which the amount or any portion thereof should have been returned, until the day of payment.
- (d) In addition, a penalty of five percent (5%) of the tax due or \$5.00 whichever is greater for each 30 days or fraction thereof of delinquency, not to exceed twenty five percent (25%) or \$25.00 in the aggregate, whichever is greater, shall be assessed and paid by the operator to the County.
- (e) The estimated tax together with applicable penalties and interest may be collected utilizing any of the enforcement methods set forth in this Resolution.

XVII.

Each operator collecting a tax under the provisions of this section shall keep for a period of at least three years all records, receipts, invoices, and other pertinent papers setting forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the County may, in writing, from time to time require.

XVIII.

The Board of Commissioners or its designated representative(s) shall administer and enforce the provisions of this section for the collection of the tax herein imposed, and in so doing shall have the following powers:

- (a) To examine, or authorize the examination of, books, papers, records, financial reports, equipment, and other facilities of any operator subject to this Resolution, in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- (b) To require the filing of reports by any person or persons having in their possession or custody information relating to rentals which are subject to the tax herein levied; and,
- (c) To allow a credit on any amount due payable from persons who paid the tax herein levied but who were erroneously or illegally subjected thereto.

XIX.

At any time within three years after any tax or any portion of such tax required to be collected becomes due and payable, the County attorney at the direction of the Board of Commissioners may bring an action in a court of competent jurisdiction in the name of the County to collect such amount due together with interest, court fees, filing fees, attorney's fees, and other legal fees incident thereto.

XX.

If any operator becomes liable for any amount required to be paid by this section and subsequent thereto sells out or quits the business, the successors or assignees of such operator shall withhold a sufficient amount of the purchase price to cover such amount due. In the event said purchaser of the business fails to withhold the required amount, he/she/it shall become personally liable for the extent of the tax owed, together with any applicable penalties and interest. Any operator or person who ceases to operate the entity under which the same is registered with the County, said operator or person must notify the Board of Commissioners Office in writing within thirty (30) days of closing said enterprise.

XXI.

- (a) Any person who shall do anything prohibited by this Resolution or who shall fail to do anything required by this Resolution shall be guilty of a misdemeanor, amenable to the process of the Magistrate Court of Fannin County and upon conviction, shall be assessed with any penalty, including fine, confinement, or both, allowed by law

for the violation of County Resolutions or Ordinances each and every day that such violation exists shall be deemed a separate offense.

- (b) In order to enforce this Resolution or to correct or abate any violation of the Resolution, the Board of Commissioners of Fannin County, in addition to other remedies may institute injunction, mandamus, or other appropriate action.

XXII.

- (a) If any paragraph, subparagraph, sentence, clause, phrase, or any portion of this Resolution shall be declared invalid or unconstitutional by any Court of competent jurisdiction, or if the provisions of any part of this Resolution as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Resolution not so held to be invalid, or the application of this Resolution to other circumstances not so held to be invalid. It is hereby declared to be the intent of the Board of Commissioners to provide separable and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.
- (b) All Resolutions or parts of Resolutions in conflict with the terms of this Resolution are hereby repealed, but it is hereby provided that any Resolution or law which may be applicable hereto and aid in carrying out or making effective the intent, purpose and provisions hereof, which shall be literally construed to be in favor of Fannin County is hereby adopted as part hereof.
- (c) The effective date of this Resolution shall be the 1st day of January, 201~~7~~³.

XXIII.

In order to comply with the mandates of the applicable Laws of the State of Georgia, an administrative fee is hereby implemented on any business or person under the purview of the within ordinance. Said administrative fee shall be in the amount of \$25.00 payable annually. Said administrative fee shall be remitted to the Board of Commissioners, before the 1st day of September of each year that this ordinance is in effect. The administrative fee after September 1st will be \$75.00. The Board of Commissioners, or designated representative, shall issue a lodging certificate to said enterprise paying said administrative fee.

Adopted, after publication, notice and hearing on the _____ day of _____, 2016.

BOARD OF COMMISSIONERS
OF FANNIN COUNTY, GEORGIA

William C. Simonds, Chairman

Earl W. Johnson, Post One Commissioner

Larry Joe Sosebee, Post Two Commissioner

ATTEST:

Clerk

