

**ORDINANCE NO. 35-2007**

**AN ORDINANCE ENACTING A TRANSIENT GUEST BED TAX IN THE VILLAGE OF MADISON PROVIDING FOR RATE OF TAX, EXEMPTIONS, PENALTIES AND FOR ITS COLLECTION AND ADMINISTRATION.**

**WHEREAS**, Council for the Village of Madison has determined that it is necessary for the operation of the Village government that a tax be levied on overnight lodging of transient guests;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MADISON, COUNTY OF LAKE AND STATE OHIO, THAT THE MADISON VILLAGE TRANSIENT GUEST BED TAX BE AND HEREBY IS ENACTED AS FOLLOWS:**

**SECTION 1: DEFINITIONS**

For purposes of this chapter, the following words and phrases shall have the following meanings ascribed to them respectively:

(a) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered for a consideration to guests, in which 5 or more rooms are used for the accommodation of guests, whether the rooms are in one or several structures.

(b) "Bed & Breakfast Inn" means a residential structure in which 2 or more rooms are available to paying guests and are lodged on an overnight basis. The guests may be served breakfast in connection with their lodging.

(c) "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms, or space or portion thereof, in any hotel or bed and breakfast for dwelling, lodging, or sleeping purposes. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet, or private dining rooms, or exhibit, sample, or display space shall to be considered occupancy within the meaning of this definition, unless the person exercising occupancy uses or possesses, or has the right to use or possess, all or any portion of the room or suite of rooms for dwelling, lodging, or sleeping purposes.

(d) "Operator" means the person who is proprietor of the hotel or bed and breakfast, whether in the capacity of owner, lessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter, and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

(e) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

(f) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

(g) "Transient guest" means persons occupying a room or rooms for sleeping accommodations for less than 30 consecutive days.

(h) "Village Tax Administrator" means the Village Tax Administrator of the Village of Madison or his agents, employees or designees.

## **SECTION 2: RATE OF TAX**

The Village of Madison agrees to create a Transient Guest Bed tax, the rate of tax as follows: Commencing on January 1, 2008 for the purpose of providing revenue with which to meet the needs of the Village for general operating expenses, there is levied a tax of 3% on all rents received by a hotel or bed and breakfast for lodging furnished to transient guests.

This tax constitutes a debt owed by the transient guest to the Village, which is extinguished only by payment to the operator as trustee for the Village, or to the Village. The transient guest shall pay the tax to the operator of the hotel or bed and breakfast at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient guest ceasing to occupy space in the hotel or bed and breakfast. If for any reason the tax due is not paid to the operator of the hotel or bed and breakfast, the Village Tax Administrator may require that the tax be paid directly to the Village; and

## **SECTION 3: EXEMPTIONS**

- (a) No tax shall be imposed under this chapter:
- (1) Upon rents not within the taxing power of the Village under the Constitution or laws of Ohio or the United States;
  - (2) Upon rents of \$5.00 a day or less
- (b) No exemption claimed under subsections (a)(1) or (2) hereof shall be granted except upon a claim therefore made at the time rent is collected, and, under penalty of perjury, upon a form prescribed by the Village Tax Administrator. All claims of exemption under subsection (a)(3) hereof shall be made in the manner prescribed by the Village Tax Administrator.

#### **SECTION 4: TAX TO BE SEPARATELY STATED AND CHARGED**

(a) The tax to be collected shall be stated and charged separately from the rent, and shown separately on any record thereof, at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy, or any bill or statement or charge made for an occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the Village, and the operator shall be liable for the collection thereof and for the tax.

(b) No operator of a hotel or bed and breakfast shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

#### **SECTION 5: REGISTRATION**

Within 30 days after the effective date of this chapter, or within 30 days after commencing business, whichever is later, each operator of any hotel or bed and breakfast renting lodging to transient guests shall register the hotel or bed and breakfast with the Village Tax Administrator and obtain from him a "transient occupancy registration certificate." The certificate shall, among other things, state the following:

- (a) The name of the operator
- (b) The address of the hotel or bed and breakfast
- (c) The date upon which the certificate was issued;
- (d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the transient occupancy tax chapter by registering with the Village Tax Administrator for the purpose of collecting from transient guests the transient occupancy tax and remitting said tax to the Village Tax Administrator. This certificate does not constitute a permit"

#### **SECTION 6: REPORTING AND REMITTING**

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Village Tax Administrator, make a return to the Village Tax Administrator, on forms provided by him, of the total rents charged and received, and the amount of tax collected for transient occupancies. All claims for exemption from the tax filed by occupants with the operator during the reporting period shall be filed with the report. At the time the return is filed, the full amount of the tax collected shall be remitted to the Village Tax Administrator. The Village Tax Administrator may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax, and he may require further information in the return if the information is pertinent to the collection of the tax. Returns and payments

are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the Village until payment thereof is made to the Village Tax Administrator. All returns and payments submitted by each operator shall be treated as confidential by the Village Tax Administrator, and shall not be released by him except upon order of a court of competent jurisdiction, or to an officer or agent of the United States, the State of Ohio, the county of Lake or the Village of Madison, for official use only.

#### **SECTION 7: PENALTIES AND INTERST**

- (a) Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty equal to 10% of the amount of the tax, in addition to the tax.
- (b) Fraud. If the Village Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to 25% of the amount of the tax shall be added thereto in addition to the penalties stated in subsection (a) hereof.
- (c) Interest. In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of 1% per month, or fraction thereof, on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- d) Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing or appeal
- (e) Abatement of Interest and Penalty. In cases where a return has been filed in good faith, and an assessment has been paid within the time prescribed by the Tax Administrator, then the Administrator may abate any charge of penalty or interest, or both.

#### **SECTION 8: FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY VILLAGE TAX ADMINISTRATOR**

If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax, or any portion thereof required by this chapter, the Village Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Village Tax Administrator shall procure such facts and information upon which to base the assessment of any tax imposed by this chapter, and payable by any operator who has failed or refused to collect the same and to make a report and remittance, he shall proceed to determine and assess against the operator the tax, interest, and penalties provided for by this chapter. In case such determination is made, the Village Tax Administrator shall give notice of the amount so assessed by serving it personally, or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. The operator may within 10 days after the serving or mailing of the notice make application in writing to the Village Tax Administrator for a hearing on the amount assessed. If an

application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the Village Tax Administrator, shall become final and conclusive, and immediately due and payable. If an application is made, the Village Tax Administrator shall give not less than 5 days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for the tax, interest, and penalties. At the hearing, the operator may appear and offer evidence why the specified tax, interest, and penalties should be so fixed. After the hearing, the Village Tax Administrator shall determine the proper tax to be remitted, and shall give written notice to the person in the manner prescribed herein of the determination and the amount of the tax, interest, and penalties. The amount determined to be due shall be payable after 15 days, unless an appeal is taken to Council.

#### **SECTION 9: APPEAL**

Any operator aggrieved by any decision of the Village Tax Administrator with respect to the amount of the tax, interest, and penalties, if any, may appeal to the Madison Village Council by filing a notice of appeal with the Village Tax Administrator within 15 days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing the appeal, and shall give notice in writing to the operator at his last known place of address. The findings of the Village Council shall be served upon the appellant in the manner prescribed above for service of a notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

#### **SECTION 10: RECORDS**

It shall be the duty of every operator liable for the collection and payment to the Village of any tax imposed by this chapter to keep and preserve, for a period of 3 years, all records as may be necessary to determine the amount of tax as he may have been liable for the collection of and payment to the Village, which records the Village Tax Administrator shall have the right to inspect at all reasonable times.

#### **SECTION 11: REFUNDS**

(a) Whenever the amount of any tax, interest, or penalty has been overpaid, or paid more than once, or has been erroneously or illegally collected or received by the Village under this chapter, it may be refunded as provided in subsections (b) and (c) hereof, provided a claim in writing therefore, stating, under penalty of perjury, the specific grounds upon which the claim is founded, is filed with the Village Tax Administrator within 3 years of the date of payment. The claim shall be on forms furnished by the Village Tax Administrator;

(b) An operator may claim a refund or take as a credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the Village Tax Administrator that the person from whom the tax has been collected was not a transient



guest; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient guest or credited to rent subsequently payable by the transient to the operator.

(c) A transient guest may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the Village, by filing a claim in the manner provided in subsection (a) hereof, but only when the tax was paid by the transient guest directly to the Village Tax Administrator, or when the transient guest, having paid the tax to the operator, establishes to the satisfaction of the Village Tax Administrator that the transient guest has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

### **SECTION 12: ACTIONS TO COLLECT**

Any tax required to be paid by a transient guest under the provisions of this chapter shall be deemed a debt owed by the transient guest to the Village. Any tax collected by an operator which has not been paid to the Village shall be deemed a debt owed by the operator to the Village. Any person owing money to the Village under the provisions of this chapter shall be liable to an action brought in the name of the Village of Madison for the recovery of the amount.

### **SECTION 13: CONFIDENTIAL REPORTS**

All returns and information relating to the business of any other person required to collect or remit the tax imposed by this chapter and coming into the possession of the Village Tax Administrator, his agents and employees, shall be confidential. Any person divulging such information unless ordered to do so by a court of competent jurisdiction shall be subject to a fine or penalty of not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalties, any employee of the Village who violates the provisions of this section relative to disclosure of confidential information shall be immediately dismissed from the service of the Village.

### **SECTION 14: PENALTY**

(a) Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and shall be punishable therefore by a fine of not more than \$500, or by imprisonment for a period of not more than 6 months, or both.

(b) Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Village Tax Administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. Any person, required to make, render, sign, or verify any report

or claim, who makes a false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor, and is punishable as aforesaid.

**SECTION 15:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberation of this council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 16:** That this Ordinance shall take effect at the earliest time allowed by law.

PASSED: 8-20-2007

Michael Evangelista  
Michael Evangelista - Mayor

SPONSORED BY:

ATTEST:

Mr. Ronald Bartlett  
Councilman

Brenda M. Break  
Brenda Break - Fiscal Officer

Mr. Bob Hill  
Councilman

1<sup>st</sup> Reading, January 19, 2016  
2<sup>ND</sup> Reading, February 1, 2016  
3<sup>rd</sup> Reading, February 16, 2016

Introduced by: Mayor Britton

## ORDINANCE NO. 1 - 2016

**AN ORDINANCE AMENDING ORDINANCE NO. 35-2007 AND REENACTING, AMENDING, REARRANGING, REVISING, AND ENACTING FOR CODIFICATION PURPOSES CHAPTER 182 OF PART ONE, ADMINISTRATIVE CODE, OF THE CODIFIED ORDINANCES OF MADISON VILLAGE, OHIO, LEVYING AN EXCISE TAX OF THREE PERCENT ON HOTEL AND BED AND BREAKFAST LODGING TRANSACTIONS WITHIN THE VILLAGE OF MADISON.**

WHEREAS, by Ordinance No. 35-2007 the Village enacted an excise tax pursuant to § 5739.08 of the Ohio Revised Code on transactions whereby occupancy is furnished to the transient guests of hotels and bed and breakfasts within the Village; and

WHEREAS, as part of the Village's ongoing efforts to update and amend its ordinances for codification, the Council further desires to add the Lodging Tax to its Administrative Code as Chapter 182; and

WHEREAS, the Council finds that the proposed new Part One, Administrative Code, Chapter 182, Lodging Tax, is in furtherance of the public health, safety, convenience, comfort, prosperity, general welfare, and further the good and orderly operation of the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MADISON, COUNTY OF LAKE, STATE OF OHIO, THAT:

SECTION 1. That Ordinance No. 35-2007 is hereby comprehensively amended, as of the effective date of this Ordinance, by the following ordinances of the Village of Madison, Ohio of a general and permanent nature, as amended, revised, codified, rearranged and consolidated into component codes, titles, articles and sections and same are hereby approved, adopted and enacted as Chapter 182 of Part One – Administrative Code of the Codified Ordinances of Madison Village, Ohio:

- 182.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.
  - 182.011 Authority to Levy Tax.
  - 182.012 Purposes of Tax; Imposition of Tax; Rate.
  - 182.013 Exemptions.
  - 182.014 Allocation of Funds.



182.015 Effective Date.

182.02 DEFINITIONS.

182.03 TAX TO BE SEPARATELY STATED AND CHARGED.

182.04 REGISTRATION.

182.05 REPORTING AND REMITTING.

182.06 PENALTIES AND INTEREST.

182.07 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY FISCAL OFFICER.

182.08 APPEAL.

182.09 RECORDS; INSPECTION; DESTRUCTION.

182.10 REFUNDS.

182.11 ACTIONS TO COLLECT.

182.12 CONFIDENTIAL REPORTS.

182.13 FRAUD.

182.98 SAVINGS CLAUSE.

182.99 VIOLATIONS – PENALTY.

SECTION 2. That the full, complete and accurate text of Chapter 182 of Part One – Administrative Code of the Codified Ordinances of Madison Village, Ohio is attached hereto as Exhibit “1” and incorporated herein as if fully re-written.

SECTION 3. That publication of these ordinances shall occur in book form containing the certification of the President of Council and Fiscal Officer of their correctness and same shall constitute the Codified Ordinances of Madison Village, Ohio, Part One – Administrative Code, Chapter 182.

SECTION 4. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including § 121.22 of the Ohio Revised Code.

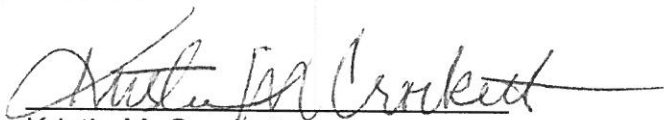
SECTION 5. This Ordinance shall take effect and be in force from and after March 17, 2016.

PASSED:

2-16-16

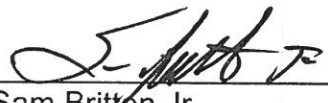
  
Kenneth D. Takacs  
President of Council

Attested:

  
Kristie M. Crockett  
Fiscal Officer / Clerk of Council

Approved:

Date: 2-16-16

  
Sam Britton Jr.  
Mayor

I hereby certify that this ordinance/resolution was duly published pursuant to law.

Publication: Hazette/DNO

On: 2-26-16

X Kristie M. Crockett Fiscal Officer

**CHAPTER 182**  
**Lodging Tax**

- 182.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.
  - 182.011 Authority to Levy Tax.
  - 182.012 Purposes of Tax; Imposition of Tax; Rate.
  - 182.013 Exemptions.
  - 182.014 Allocation of Funds.
  - 182.015 Effective Date.
- 182.02 DEFINITIONS.
- 182.03 TAX TO BE SEPARATELY STATED AND CHARGED.
- 182.04 REGISTRATION.
- 182.05 REPORTING AND REMITTING.
- 182.06 PENALTIES AND INTEREST.
- 182.07 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY FISCAL OFFICER.
- 182.08 APPEAL.
- 182.09 RECORDS; INSPECTION; DESTRUCTION.
- 182.10 REFUNDS.
- 182.11 ACTIONS TO COLLECT.
- 182.12 CONFIDENTIAL REPORTS.
- 182.13 FRAUD.
- 182.98 SAVINGS CLAUSE.
- 182.99 VIOLATIONS – PENALTY.

**182.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.**

**182.011 AUTHORITY TO LEVY TAX.**

The excise tax on lodging transactions established by this chapter 182 is authorized by § 5739.08 of the Ohio Revised Code. This excise tax is in addition to any tax levied pursuant to §§ 5739.02, 5739.09, or any other section of the Ohio Revised Code to the greatest extent permitted by law.

**182.012 PURPOSES OF TAX; IMPOSITION OF TAX; RATE.**

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements, road, street and highway construction and improvement, improvement of police protection, improvement of fire protection, improvement and construction of storm drainage, the improvement of general municipal functions, and for all lawful municipal purposes, an excise tax of three (3%) percent is hereby levied at a uniform rate on all rent transactions by which occupancy in a hotel and/or bed and breakfast is or is to be furnished to transient guests.

This tax constitutes a debt owed by the transient guest to the Village, which is extinguished only by payment to the operator as trustee for the Village, or to the Village. The transient guest shall pay the tax to the operator of the hotel or bed and breakfast at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient guest ceasing to occupy space in the hotel or bed and breakfast. If for any reason the tax due is not paid to the operator of the hotel or bed and breakfast, the Fiscal Officer may require that the tax be paid directly to the Village.

**182.013 EXEMPTIONS.**

(A) No tax shall be imposed under this chapter:

- (1) Upon rents not within the taxing power of the Village under the Constitution or laws of Ohio or the United States;
- (2) Upon rents paid by the state of Ohio or any of its political subdivisions.

(B) No exemption claimed under subsection (A) hereof shall be granted except upon claim therefor made at the time rent is collected, and, under penalty of perjury upon a form prescribed by the Fiscal Officer. All claims of exemption shall be made in the manner prescribed by the Fiscal Officer. The Fiscal Officer shall have the authority to waive the form requirement pursuant to this subsection (B) in the event the laws of the state of Ohio or of the United States provide for the protection of any person's identity.

**182.014 ALLOCATION OF FUNDS.**

The funds are to be allocated pursuant to municipal need(s) for the purposes stated above in § 182.012.

**182.015 EFFECTIVE DATE.**

Ordinance 1-2016, and as codified, does not repeal the existing sections of Ordinance No. 35-2007 but rather amends Ordinance No. 35-2007 effective March 17, 2016.

## 182.02 DEFINITIONS.

Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the state of Ohio and Village of Madison, unless a different meaning is clearly required.

For purposes of this section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

As used in this chapter:

- (A) "Bed and breakfast" has the same meaning as that stated in § 2.2(b)(15) of the Zoning Code of the Village of Madison.
- (B) "Fiscal Officer" means the individual holding the office of Fiscal Officer of the Village of Madison and may include a person temporarily holding such office as Acting Fiscal Officer, when applicable.
- (C) "Hotel" has the same meaning as that stated in § 5739.01(M) of the Ohio Revised Code, except that, in accordance with § 5739.09(G) of the Ohio Revised Code, a "hotel" includes establishments in which fewer than five (5) rooms are used for the accommodation of transient guests. The term "hotel" includes a "bed and breakfast" as defined herein except when the context clearly indicates otherwise.
- (D) "Person" has the same meaning as that stated in § 181.03(29) of the Administrative Code of the Village of Madison.
- (E) "Occupancy" mean the use or possession, or the right to the use or possession of any room or rooms, or space or portion thereof, in any hotel and/or bed and breakfast for dwelling, lodging, or sleeping purposes. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample or display space shall not be considered occupancy within the meaning of this definition, unless the person exercising occupancy uses or possesses, or has the right to use or possess, all or any portion of such room or suite of rooms for dwelling, lodging, or sleeping purposes.
- (F) "Operator" means the person who is the proprietor of a hotel or bed and breakfast, whether in the capacity of owner, lessee, licensee, mortgagee in possession, or any other capacity. Where the operator performs its functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as the principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered compliance by both.
- (G) "Rent" means the consideration received for occupancy valued in U.S. currency, whether received as currency or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.
- (H) "Transient guest" has the same meaning as that stated in § 5739.01(N) of the Ohio Revised Code.

**182.03 TAX TO BE SEPARATELY STATED AND CHARGED.**

(A) The tax to be collected pursuant to § 182.012 of this chapter shall be stated and charged separately from the rent, and shown separately on any record thereof, at the time when occupancy is arranged or contracted and charged for, and upon every evidence of occupancy, or any bill or statement or charge made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the Village of Madison, and the operator shall be liable for the collection thereof and for the tax.

(B) No operator of a hotel or bed and breakfast shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

**182.04 REGISTRATION.**

Within thirty (30) days of the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel or bed and breakfast renting lodging to transient guests shall register said hotel or bed and breakfast with the Fiscal Officer and obtain from him or her a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- (i) The name of the operator;
- (ii) The address of the hotel or bed and breakfast;
- (iii) The date upon which the certificate was issued; and
- (iv) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Lodging Tax ordinance of the Village of Madison by registering with the Fiscal Officer for the purpose of collecting from transient guests the Lodging Tax and remitting said tax to the Fiscal Officer. This certificate does not constitute a permit."

The registration requirement of this section is in addition to and in not in lieu of any other required permit approvals. There is no fee for registration pursuant to this section.

**182.05 REPORTING AND REMITTING.**

(A) Each hotel operator shall, on or before the last day of each calendar month make and file a return for the preceding month, on forms prescribed by the Fiscal Officer, showing the receipts from furnishing lodging, the amount of tax due from the operator to the Village for the period of time covered by the return, and such other information as the Fiscal Officer deems necessary for the proper administration of this chapter. The Fiscal Officer may extend the time for making and filing returns for good cause shown. Returns shall be filed by delivering or mailing same to the Fiscal Officer together with payment of the full amount of tax shown to be due thereon.

(B) Each bed and breakfast operator shall, on or before the last day of each quarter (March 31, June 30, September 30, December 31) make and file a return for the preceding quarter, on forms prescribed by the Fiscal Officer, showing the receipts from furnishing lodging, the amount of tax due from the operator to the Village for the period of time covered by the return, and such other information as the Fiscal Officer deems necessary for the proper administration of this Chapter. The Fiscal Officer may extend the time for making and filing returns for good cause shown. Returns



shall be filed by delivering or mailing same to the Fiscal Officer together with payment of the full amount of tax shown to be due thereon.

(C) All claims for exemptions from tax filed by transient guests with the operator during the reporting period shall be filed with the return.

(D) All returns and payments submitted by each operator shall be treated as confidential by the Fiscal Officer and shall not be released by him or her except upon order of a court of competent jurisdiction or to an officer or agent of the United States, state of Ohio, county of Lake, or Village of Madison, for authorized official use.

(E) If for any reason an operator shall cease to do business in the Village, all returns and payments are due immediately upon cessation of business.

(F) All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the Village of Madison until payment thereof is made to the Fiscal Officer.

#### **182.06 PENALTIES AND INTEREST.**

(A) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty equal to ten (10%) percent of the amount of the tax, in addition to the tax.

(B) Continued Delinquency. Any operator who fails to remit any delinquent remittances on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty equal to ten (10%) percent of the amount of the tax and previous penalty in addition to the tax and the ten (10%) percent penalty first imposed. An additional penalty equal to ten (10%) percent of the total tax and penalty of the previous thirty (30) day period shall be added for each successive thirty (30) day period that account remains delinquent.

(C) Fraud. If the Fiscal Officer determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to twenty-five (25%) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (A) and (B) of this section.

(D) Interest. In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one (1%) percent per month, or fraction thereof, on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(E) Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing or appeal.

(F) Abatement of Interest and Penalty. In cases where returns were filed in good faith, and an assessment has been paid within the time prescribed by this chapter or where otherwise allowed within the Fiscal Officer's discretion, then the Fiscal Officer may abate any charge of penalty or interest, or both.

**182.07 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY FISCAL OFFICER.**

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the Fiscal Officer shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the Fiscal Officer shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In case such determination is made, the Fiscal Officer shall give notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at its last known place of business. Such operator may within ten (10) days after serving or mailing of such notice make application in writing to the Fiscal Officer for a hearing on the amount assessed.

If an application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the Fiscal Officer shall become final and conclusive and immediately due and payable. If such application is made, the Fiscal Officer shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest, and penalties. At the hearing, the operator may appear and offer evidence why the specified tax, interest, and penalties should not be so fixed. After the hearing, the Fiscal Officer shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest, and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in § 182.08.

**182.08 APPEAL.**

Any operator aggrieved by any decision of the Fiscal Officer with respect to the amount of the tax, interest, and penalties, if any, may appeal to the Local Board of Tax Review by filing a notice of appeal with the Board within fifteen (15) days of the serving or mailing of the determination of tax due. The Board shall fix a time and place for hearing the appeal, and shall give notice in writing to such operator at its last known place of business. The findings of the Board shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon service of notice.

**182.09 RECORDS.**

Each operator shall keep complete and accurate records of lodging furnished, together with a record of tax collected thereon, which shall be the amount due under this chapter, and shall keep all invoices, and such other pertinent documents. If the operator furnished lodging not subject to the tax, the operator's records shall show the identity of the transient guest, if the sale was not exempted by reason of such identity, or the nature of the transaction if exempted for any other reason. Such records and other documents shall be open during business hours for inspection by the Fiscal Officer, or his or her agents, and shall be preserved for a period of four (4) years, unless the Fiscal Officer, in writing, consents to their destruction within that period, or by any order requesting that such records be kept for a longer period of time.

### **182.10 REFUNDS.**

(A) Whenever the amount of tax, interest, or penalty has been overpaid, or paid more than once, or has been erroneously or illegally collected or received by the Village under this chapter, it may be refunded as provided in subsections (B) and (C) of this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Fiscal Officer within three (3) years of the date of payment. The claim shall be made on forms furnished by the Fiscal Officer.

(B) Any operator may claim a refund or take as a credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the Fiscal Officer that the person from whom the tax has been collected was not a transient guest; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient guest or credited to rent subsequently payable by the transient guest to the operator.

(C) A transient guest may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the Village, by filing a claim in the manner provided in subsection (A) hereof, but only when the tax was paid by the transient guest directly to the Fiscal Officer, or when the transient guest, having paid the tax to the operator, establishes to the satisfaction of the Fiscal Officer that the transient guest has been unable to obtain a refund from the operator who collected the tax.

(D) No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

### **182.11 ACTIONS TO COLLECT.**

Any tax required to be paid by a transient guest under the provision of this chapter shall be deemed a debt owed by the transient guest to the Village. Any such tax collected by an operator which has not been paid to the Village shall be deemed a debt owed by the operator to the Village. Any person owing money to the Village under the provisions of this chapter shall be liable to an action brought in the name of the Village of Madison for the recovery of such amount.

### **182.12 CONFIDENTIAL REPORTS.**

All returns and information relating to the business of any person required to collect and remit the tax imposed by this chapter and coming into possession of the Fiscal Officer, his or her agents and employees, shall be confidential. Any person divulging such information, unless so ordered to do so by a court of competent jurisdiction or to an officer or agent of the United States, state of Ohio, county of Lake, or Village of Madison, for authorized official use, shall be subject to dismissal from service with the Village.

This section shall not operate so as to preclude the use of otherwise confidential information when needed for evidentiary purposes in an action brought pursuant to this chapter for a violation of or to enforce any of its provisions, be same civil or criminal.

**182.13 FRAUD.**

(A) No person shall knowingly make, present, aid, or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim, or document authorized or required by this chapter to be filed with the Fiscal Officer, or knowingly procure, counsel, or advise the preparation or presentation of such report, return, schedule, statement, claim, or document, or knowingly change, alter, or amend, or knowingly procure, counsel or advise such change, alteration, or amendment of the records upon which such report, return, schedule, statement, claim, or document is based with intent to defraud the Village or the Fiscal Officer.

(B) No person shall knowingly present to any operator any false information indicating that the lodging as furnished is not subject to the tax.

**182.98 SAVINGS CLAUSE.**

If any sentence, clause, section or part of this chapter, or any tax imposed against, or exemption granted pursuant to this chapter, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this chapter so found and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of the legislative authority of the Village that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included in this chapter.

**182.99 VIOLATIONS; PENALTY**

(A) Whoever violates § 181.13 of this chapter shall be guilty of a misdemeanor of the first degree and shall be subject to the penalties set forth in § 501.99 of the Codified Ordinances of Madison Village for a first degree misdemeanor.

(B) Whoever knowingly violates any provision of this chapter for which violation no penalty is otherwise provided, is guilty of a misdemeanor of the fourth degree on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the second degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the first degree and shall be subject to the penalties set forth in § 501.99 of the Codified Ordinances of Madison Village for such misdemeanors.

(C) In accordance with § 501.11 of the Codified Ordinances of Madison Village, it is the intent of this ordinance to impose organizational criminal liability.

(D) The imposition of any other penalties provided herein shall not preclude the Village from instituting an appropriate action or proceeding in a court of proper jurisdiction to prevent an unlawful action, or to restrain, correct, or abate a violation, or to require compliance with the provisions of this chapter or other applicable laws, ordinances, rules, or regulations.