

**ORDINANCE NS-2253**

**AN ORDINANCE AMENDING BEND CODE CHAPTER 12.05 ROOM TAX REGARDING COLLECTION OF TAX BY THIRD PARTIES**

- A. Bend Code Section 12.05.015 Room Tax Imposed currently provides that when third parties such as wholesalers receive payment directly from the occupant, they are required to collect the tax and forward the tax to the hotel operator.
- B. The statutes applicable to the state room tax require the third party that receives the payment, referred to as the "Transient Lodging Intermediary" in the statutes, to not only collect the tax, but to report and forward the tax.
- C. In order not to create differing standards and procedures between state transient lodging tax and the City of Bend Room Tax, this ordinance adopts a code amendment that provides that the "Transient Lodging Intermediary" will collect the tax and report and remit the tax to the City, unless a tax collection and remittance agreement is executed between the intermediary and the operator of the lodging facility and the agreement is approved by the City.
- D. This ordinance also clarifies existing language regarding tour operators.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Bend Code Section 12.05.05.010C is amended to read:

C. **Operator** means any person who receives rent from an occupant or a person paying an occupant's rent.

Section 2. Bend Code Section 12.05.010D Example 4 is amended to read:

4. A third party tour company offers a package that includes both hotel and ski lift tickets for \$130 and pays the operator \$100 for the room. The rent is \$100.

Section 3. Bend Code Section 12.05.010D is amended by adding a new Example 8 to read as follows:

8. An online room wholesaler sells a room in a lodging facility for \$130 to customers and pays the owner of the lodging facility \$100. The rent is \$130 because that is the amount paid by the customer and the wholesaler must collect the tax based on the \$130 rent and report and remit the tax to the City, less the administration fee authorized by Section 12.05.035, unless the wholesaler has an approved tax collection and remission agreement, in which case the entity operating the facility will report and remit the tax to the City based on the full amount collected by the wholesaler, less the administration fee.

Section 4. Bend Code Section 12.05.010 is amended by adding a new subsection H to read as follows:

H. **Tax collection and remission agreement** means a written agreement between a "transient lodging intermediary" as that term is used in state law and a person operating temporary lodging that requires the transient lodging

intermediary to collect the tax imposed by this Chapter, forward the full amount of the tax collected to the person operating the temporary lodging along with information as to the full amount of rent collected, and requires the person operating the temporary lodging to report the full amount of the rent paid and to remit the tax, less the authorized administration fee, to the City. A tax collection and remission agreement is not valid until approved by the City.

Section 5. Bend Code Section 12.05.015A is amended to read:

A. Effective June 1, 2015, each occupant shall pay a tax in the amount of 10.4 percent of the rent. The occupant shall pay the room tax with the rent payment. Tax amounts shall be rounded down to the nearest cent. The operator shall maintain records of all rent charged and room tax payments received. The amount of the room tax shall be stated separately from rent or any other charges on all receipts or invoices issued by the operator. If rent is paid in installments a proportionate share of the room tax shall be paid by the occupant to the operator with each installment unless the operator pays the entire amount with the first payment.

Section 6. Bend Code Section 12.05.020 is amended to read as follows:

**12.05.020 Collection of Room Tax by Operator.**

Every operator shall collect the room tax at the time rent is paid, unless an exemption under BC 12.05.025 applies. If payment is by credit card, payment is made at the time credit card information is provided, not when the tax collector ultimately received credit for the transaction. The operator holds the room tax payment in trust for the City until the taxes are remitted to the City as provided in BC 12.05.035. An operator may co-mingle the tax proceeds with funds of the operator, but the operator is not the owner of room tax proceeds, except that, when a return is filed, the operator becomes the owner of the administrative fee authorized to be retained under BC 12.05.035. Operators may choose to file returns and remit payment based on amounts accrued but not yet collected, and if they do so, will be entitled to a credit for any uncollectibles. The operator is liable for any tax that should have been collected from the occupant, except in cases of nonpayment of rent by the occupant.

Section 7. Bend Code Section 12.05.030 is amended to read as follows:

**12.05.030 Registration of Operator– Form and Contents – Execution – Certification of Authority.**

Every person engaging or about to engage in business as an operator shall provide a completed registration form to the Tax Administrator within 15 calendar days after commencing business. The registration form shall require the operator to provide the name of the business, any separate business address, and other information as the Tax Administrator may require. Operators who own or operate lodging facilities in Bend shall provide the address of the lodging facility. The registration form shall be signed by the Operator. The Tax Administrator shall, within 15 days after registration, issue without charge a certificate of authority to collect the tax. The obligation to collect the tax is imposed once rent for a room is paid, even if the registration form has not been filed or if the certificate has not been issued. Operators who function as transient lodging intermediaries as that

term is defined by state law are not required to register if they have and comply with tax collection and remission agreements with all entities within the City of Bend for whom they rent rooms.

Certificates shall be nonassignable and nontransferable, and shall be surrendered to the Tax Administrator when the business is sold or transferred or when a lodging facility ceases to operate at the location specified in the registration form. Each certificate issued to an operator for a specific lodging facility shall be prominently displayed at the lodging facility and include:

- A. The name of the operator;
- B. The address of the lodging facility;
- C. The date the certificate was issued;
- D. The certificate number as assigned by the Tax Administrator.

Section 8. Bend Code Section 12.05.035A is amended to read:

**12.05.035 Remittance and Returns.**

A. Operators shall submit a completed tax return form to the Tax Administrator for each calendar month by the fifteenth of the following month, accompanied by remittance of all tax collected, less a five percent administration fee. If the estimated monthly amount of average tax due is \$100.00 or less, the operator has the option of filing the return and remitting the tax on a quarterly basis on the fifteenth day of the month following the end of each calendar quarter (April 15, July 15, October 15, and January 15). Operators shall also submit any tax that was due but not collected if the rent on which the tax is based was paid. An operator who does not operate a lodging facility but acts as a "transient lodging intermediary" as that term is used in state law is not required to file a return if the transient lodging intermediary has an approved tax collection and remission agreement with the person who operates the lodging facility. Amounts reported and remitted by a "transient lodging intermediary" shall be listed as exclusions on the reports of the entity operating the facility.

Section 9. Bend Code Section 12.05.035C is amended to read:

C. Returns shall show the gross rents collected, taxable rents, the total amount of room tax collected and the amount of the administrative fee retained by the operator. Returns shall also show the exempt and excluded rents and the basis for exemptions and exclusions.


Section 10. All other provisions of Bend Code Chapter 12.05, including all unamended subsections of BC 12.05.010, 12.05.015 and 12.05.035 remain in full force and effect.

First Reading: October 7, 2015

Second reading and adoption by roll call vote: October 21, 2015

Yes: Jim Clinton, Mayor  
Victor Chudowsky  
Doug Knight  
Sally Russell  
Nathan Boddie  
Casey Roats  
Barb Campbell

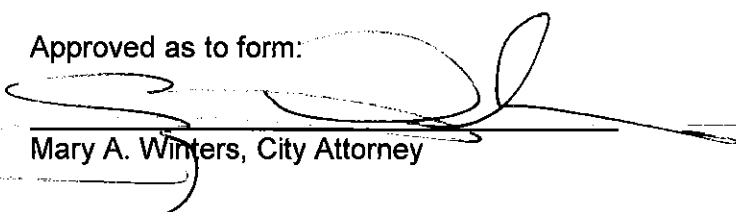
No: None

  
\_\_\_\_\_  
Jim Clinton, Mayor

Attest:

  
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Robyn Christie, City Recorder

Approved as to form:

  
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Mary A. Winters, City Attorney