

Title 5. Business - Chapter 509
ROOM TAX LAW
Teyetásta? Tsi? Lotiwistalo?loke KayanlÁhsla
hotel where they collect money there laws

509.1. Purpose and Policy

509.2. Adoption, Amendment, Repeal

509.3. Definitions

509.4. Tax Imposed

509.5. Operator's Duties

509.6. Enforcement and Appeals

509.1. Purpose and Policy

509.1-1. *Purpose.* It is the purpose of this law to impose a tax upon transient occupancy in any hotel owned by the Tribe or a Tribal member within the exterior boundaries of the Reservation and to provide a means for the collection thereof. The Oneida Business Committee will determine, through resolution, the allocation of the funds collected under this law.

509.1-2. *Policy.* It is the policy of this law to clarify jurisdictional sovereignty and to generate revenue for the Tribe.

509.2. Adoption, Amendment, Repeal

509.2-1. This law was adopted by the Oneida Business Committee by resolution BC-9-17-97-E and amended by resolution BC-06-12-13-C.

509.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

509.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

509.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

509.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

509.3. Definitions

509.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Days" means calendar days, unless otherwise specifically stated.

(b) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, house, rooming house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

(c) "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, or any other capacity, where the operator performs his or her 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 law and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this law by either the principal or the managing agent shall, however, be considered to be compliance by both.

(d) "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.

(e) "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credit and property and service of any kind or nature, without any deduction therefrom whatsoever.

(f) "Tax collector" means the Tribe's Central Accounting department, which is delegated the responsibility to collect the taxes imposed by this law, to deposit those taxes in the general treasury of the Tribe, or as otherwise directed by the Oneida Business Committee through resolution, and to develop regulations and forms to assist in implementing and enforcing this law.

(g) "Transient" means any person who exercises occupancy or is entitled to occupancy in a hotel by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant for providing a longer period of occupancy, or the occupant has paid in advance for over thirty (30) days occupancy.

(h) "Tribe" means the Oneida Tribe of Indians of Wisconsin.

509.4. Tax Imposed

509.4-1. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of a percentage of the rent charged by the operator. The Oneida Business Committee shall establish, through resolution, the percentage of tax to be charged by the operator. Said tax constitutes a debt owed by the transient to the Tribe which is extinguished only by payment to the operator.

(a) The transient shall pay the tax to the operator at the time the rent is paid. If 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's ceasing to occupy space in the hotel.

(b) If for any reason the tax due is not paid to the operator, the tax collector may require the transient to pay such tax directly to the tax collector.

509.4-2. Exemptions.

(a) No tax shall be imposed upon:

(1) Any person as to whom, or any occupancy as to which, it is beyond the power of the Tribe to impose the tax herein provided;

(2) Any tribal, federal or state officer or employee when on official business;

(3) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

(b) No exemption shall be granted unless a valid claim for an exemption is submitted at the time rent is collected upon a form prescribed by the tax collector.

509.5. Operator's Duties

509.5-1. Each operator shall collect the tax imposed by this law at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of

the rent charged, and each transient shall receive a receipt for payment from the operator. No operator 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.

509.5-2. *Registration.* Within thirty (30) days after the effective date of this law, or within thirty (30) days after commencing business, whichever is later, each operator shall register said hotel with the tax collector and obtain from the tax collector a “Transient Occupancy Registration Certificate” to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

- (a) the name of the operator;
- (b) the address of the hotel;
- (c) the date upon which the certificate was issued; and
- (d) “This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Oneida Room Tax Law by registering with the Tax Collector for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the Tribe. This certificate does not constitute a permit.”

509.5-3. *Reporting and Remitting.* Each operator shall, on or before the last day of the month following the close of each calendar quarter, make a return to the tax collector, on forms provided by the tax collector, of the total rents charged and received and the amount of tax due for transient occupancies. At the time the return is filed, the full amount of the tax due shall be remitted to the tax collector. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this law shall be held in trust for the benefit of the Tribe until payment thereof is made to the tax collector.

509.5-4. *Records.* It shall be the duty of every operator to keep and preserve, for a period of three (3) years, all records necessary to determine the amount of tax the operator was liable for collecting and paying to the Tribe, which records the tax collector shall have the right to inspect at all reasonable times.

509.6. Enforcement and Appeals

509.6-1. *Failure to Collect and Report Tax.* If any operator shall fail or refuse to collect any tax required by this law and to make, within the time provided in this law, any report and remittance of said tax or any portion thereof required by this law, the tax collector shall obtain facts and information to determine an estimate of the tax due.

- (a) When the tax collector obtains sufficient facts and information upon which to base an assessment of any tax imposed by this law and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the tax collector shall proceed to determine and assess the tax, interest, and penalties owed by the operator to the Tribe provided for by this law.
- (b) The tax collector shall give notice of the amount so assessed by serving it personally or by depositing in the United States mail, postage prepaid, or where applicable intra-

Tribal mail service utilizing intra-Tribal certified mail processes, addressed to the operator at his or her last known address. Such operator may within ten (10) business days after the serving or mailing of such notice make application in writing to the tax collector for a hearing on the amount assessed.

(1) If an application for a hearing is not made within ten (10) business days, the amount determined by the tax collector shall become final and conclusive, and immediately due and payable.

(2) If an application for a hearing is made within ten (10) business days, the tax collector shall give the operator at least five (5) business days written notice, in the manner prescribed herein, of the date, time and place of the hearing.

(A) At the hearing, the operator shall offer evidence why such specified tax, interest and penalties should not be so affixed.

(B) After the hearing, the tax collector shall determine the proper tax to be remitted and shall thereafter give written notice to the operator 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 section 509.6-5 of this law.

509.6-2. *Operator Penalties.*

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

(b) *Continued Delinquency.* Any operator who fails to remit any delinquent remittance 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 of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.

(c) *Fraud.* If the tax collector determines the operator's nonpayment of any remittance due under this law is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in 509.6-2(a) and (b) above.

(d) *Interest.* In addition to the penalties imposed, any operator who fails to remit any tax imposed by this law shall pay interest at a rate of one-half percent (½%) per month or fraction thereof on the amount due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(e) *Penalties Merged with Tax.* Every penalty imposed and such interest as accrues under the provisions of this section shall become part of the tax herein required to be paid.

509.6-3. *Transient Penalties.* Any transient who violates any provision of this law shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

509.6-4. *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 Tribe under

this law it may be refunded as provided in 509.6-4(b) and (c) below, provided a valid, written claim, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax collector within one (1) year of the date of payment. The claim shall be on forms furnished by the tax collector.

(b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received by the tax collector when it is established in a manner prescribed by the tax collector that the person from whom the tax has been collected was not a transient; 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 or credited to rent subsequently payable by the transient to the operator. Provided that, credits shall be given in all cases where the amount of refund would be less than fifty dollars (\$50.00).

(c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the Tribe by filing a claim in the manner provided above in 509.6-4(a), but only when the tax was paid by the transient directly to the tax collector, or when the transient having paid the tax to the operator establishes to the satisfaction of the tax collector that the transient 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.

509.6-5. *Appeals.* Any operator or transient aggrieved by any decision of the tax collector with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Tribe's judicial system by filing a notice of appeals with the Tribe's judicial system within fifteen (15) days of the serving or mailing of the determination of tax due.

End.

Emergency Adoption - BC-4-2-97-E

Adopted - BC-9-17-97-E

Emergency Adoption – BC-06-27-12-C

Adoption of Room Tax Rate –BC-06-27-12-D

Emergency Extension – BC-12-12-12-D

Amended-BC-06-12-13-C