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Private Acts of 1989 Chapter 5

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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SECTION 1. As used in this act unless the context otherwise requires:

- (1) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, receiver, trustee, business trust, syndicate, or any other group or combination acting as a unit.
- (2) "Hotel" means any structure or space, or any portion thereof which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.
- (3) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings or accommodations in any hotel.
- (4) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days.
- (5) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.
- (6) "County" means McMinn County, Tennessee.
- (7) "Operator" means the person operating the hotel whether as owner, lessee or otherwise, including any governmental entity operating a hotel, whether as owner or otherwise.
- (8) "Clerk" means the County Clerk of McMinn County, Tennessee, or such other officer as may be charged by resolution of the County Legislative Body with collection of the tax.
- (9) Words importing the masculine gender include the feminine and neuter, except when the contrary intention is manifest.

SECTION 2. The Legislative Body of McMinn County is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient in the amount of five percent (5%) of the consideration charged by the operator. Such tax is a privilege tax upon the transient occupying such room and is to be collected as provided in this act.

SECTION 3. One third (1/3) of the proceeds received by the county from the tax shall be designated and used for tourist development and the remaining two thirds (2/3) shall be designated and used for the economic development of McMinn County. Such tax proceeds shall be used as additional funding for tourism development and economic development and shall not be used to reduce funding sources already provided for these purposes.

SECTION 4. Such tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of his hotel, such invoice to be given directly or transmitted to the transient and such tax shall be collected by such operator from the transient and remitted to McMinn County.

When a person has maintained occupancy for thirty (30) continuous days, that person shall receive from the operator a refund or credit for the tax previously collected from or charged to him, and the operator shall receive credit for the amount of such tax if previously paid or reported to the county.

SECTION 5. (a) The tax levied shall be remitted by all operators who lease, rent or charge for any rooms or spaces in hotels within the county to the Clerk, such tax to be remitted to such officer not later than the twentieth day of each month for the preceding month. The operator is hereby required to collect the tax from the transient at the time of the presentation of the invoice for such occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the county entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the operator in accounting for remitting the tax levied by this act the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the Clerk in the form of a deduction in submitting his report and paying the amount due by such operator, provided the amount due was not delinquent at the time of payment.

SECTION 6. The Clerk shall be responsible for the collection of such tax and shall place the proceeds of such tax in accounts for the purposes stated herein. A monthly tax return shall be filed under oath with

the Clerk by the operator with such number of copies thereof as the Clerk may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the Clerk and approved by the County Legislative Body prior to use. The Clerk shall audit each operator in the county at least once a year and shall report on the audits made on a quarterly basis to the County Legislative Body. The County Legislative Body is hereby authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this act, including the form for such reports.

SECTION 7. No operator of a hotel 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.

SECTION 8. Taxes collected by an operator which are not remitted to the clerk on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and shall be liable for an additional penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is hereby declared to be unlawful and shall be punishable by a civil penalty not in excess of fifty dollars (\$50.00).

SECTION 9. It shall be the duty of every operator liable for the collection and payment to the county of any tax imposed by this act to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the county, which records the clerk shall have the right to inspect at all reasonable times.

SECTION 10. The Clerk in administering and enforcing the provisions of this act shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67 of Tennessee Code Annotated or otherwise provided by law for the County Clerks. For his services in administering and enforcing the provisions of this act, the Clerk shall be entitled to retain as a commission five percent (5%) of the taxes collected.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedies provided in Title 67 of Tennessee Code Annotated, it being the intent of this act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected shall also apply to the tax levied under the authority of this act. The provisions of Tennessee Code Annotated, Section 67-1-707, shall be applicable to adjustments and refunds of such tax.

With respect to the adjustment and settlement with taxpayers, all errors of county taxes collected by the Clerk under authority of this act shall be refunded by the Clerk.

SECTION 11. The proceeds of the tax authorized by this act shall be allocated to and placed in the general fund of McMinn County to be used for the purpose stated in Section 3 of this act.

SECTION 12. The tax levied pursuant to the provisions of this act shall only apply in accordance with the provisions of Tennessee Code Annotated, Section 67-4-1425.

SECTION 13. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the County Legislative Body of McMinn County. Its approval or nonapproval shall be proclaimed by the presiding officer of the County Legislative Body and shall be certified by the presiding officer of the County Legislative Body to the Secretary of State.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect upon being approved as provided in Section 14.

Passed: February 22, 1989.

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