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# Hotel/Motel Tax

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Dear Reader:

The following document was created from the CTAS website ([ctas.tennessee.edu](http://ctas.tennessee.edu)). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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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# Hotel/Motel Tax

Reference Number: CTAS-1639

A hotel/motel tax is a tax on the privilege of occupancy of hotel rooms. Under T.C.A. § 67-4-1401(2), the term hotel includes private, public, and government owned hotels, inns, tourist camps, tourist courts, tourist cabins, motels, short-term rental units, primitive and recreational vehicle campsites and campgrounds, or any place in which rooms, lodgings, or accommodations are furnished to transients for consideration. Prior to July 1, 2021, counties levied the hotel/motel tax by private act (with the exception of counties with a metropolitan form of government, which use a general law, T.C.A. § 7-4-101 *et seq.*)

Modifying, Levying, and Repealing Hotel/Motel Tax —Public Chapter 496 became effective on July 1, 2021. The law allows a county (except for those with a metropolitan form of government) to levy, modify, or repeal a privilege tax by resolution (rather than by private act) subject to the following restrictions: (i) the tax must not exceed 4% of consideration charged to the occupant of the hotel; (ii) subject to other provisions discussed below, a hotel/motel tax authorized before the effective date of this act that exceeds the limit remains in full force and effect; and (iii) this does not void or modify a private act, ordinance, or resolution authorizing the levy of the privilege tax. T.C.A. § 67-4-1402.

Under T.C.A. § 67-4-1403, revenue received by the county from the tax must be used for tourism purposes. However, revenue from a tax levied before July 1, 2021, may continue to be used in the same manner described in the private act or resolution. Counties are not authorized to change the use of revenue of a preexisting tax except for tourism purposes. See Title 67, Chapter 4, Part 14 of the Tennessee Code Annotated.

Short-Term Rentals —Short-term rentals are residential dwellings that are rented wholly or partially for a fee for less than 30 continuous days but do not include a hotel defined in T.C.A. § 68-14-302 or a bed and breakfast as defined in T.C.A. § 68-14-502. See T.C.A. § 67-4-1501(5).

Title 7, Chapter 4 and Title 67, Chapter 4 of the Tennessee Code Annotated define a short-term rental marketplace as a person or entity, (excluding vacation lodging services), that provides a platform for compensation, between a third-party who offers to rent a short-term rental to an occupant. Examples of short-term rental marketplaces are Airbnb and VRBO. Vacation lodging services are engaged in the business of providing management, marketing, booking, and rental or short-term rental units. One example of a vacation lodging service is a cabin rental company.

Hotel/motel taxes on short-term rental units secured through a short-term rental marketplace must be collected and remitted by the short-term rental marketplace to the department of revenue for distribution to the local government levying the tax, in accordance with Title 67, Chapter 4, Part 33, of the Tennessee Code Annotated. Vacation lodging services are not responsible for collecting and remitting hotel/motel taxes to the department of revenue but may be responsible for remitting such taxes to the county if required by private act or resolution.

Hotel/Motel Tax in Metropolitan Counties – Metropolitan Counties follow the general law found at T.C.A. § 7-4-101 *et seq.* These counties are authorized to impose a hotel/motel tax in an amount not to exceed 3% of the consideration charged by the operator. The privilege tax shall be approved by ordinance of the metropolitan council. [T. C. A. § 7-4-102](#).

In addition to tax described above, metropolitan counties having population of less than 25,000 according to the 2020 federal census or subsequent federal census are authorized to impose an additional hotel/motel tax not to exceed 3% of the consideration charged by the operator. The additional tax shall be approved by ordinance of the metropolitan council. T. C. A. § 7-4-102.

## Short-Term Rental Unit Act of 2018

Reference Number: CTAS-2492

The Short-Term Rental Unit Act became effective on May 17, 2018, and is codified at T. C. A. § 13-7-602 *et. seq.* The act provides guidance on the regulation of short-term rentals.

T. C. A. § 13-7-602 provides definitions of terms used throughout the act.

### Legacy Clause

Under T. C. A. § 13-7-603(a), and except as provided in subsection T. C. A. § 13-7-603(b), any ordinance, resolution, regulation, or other rule ("regulation") that prohibits or otherwise regulates the use of property as a short-term rental does not apply to the property if the property was being used as a short-term rental by the property owner prior to the enactment of the regulation by the local governing body. The regulation in effect at the time the property began being used as a short-term rental unit is the law that governs the use of the property until the property is sold, transferred, or is not used as a short-term rental unit for 30 continuous months, or has been in violation of the local laws three or more separate times as provided in T. C. A. § 13-7-604.

Notwithstanding subsection T. C. A. § 13-7-603(a), a regulation enacted prior to January 1, 2014, that prohibits or effectively prohibits the use of property as a short-term rental unit may apply to any property within the local governing body's jurisdiction, regardless of the property's existing use. T. C. A. § 13-7-603(b). This exception only applies to regulations that expressly limit the time a residential dwelling may be rented and does not apply to regulations that prohibit commercial activity or renting residential dwellings to transients.

### **Violation of Local Laws**

T. C. A. § 13-7-603 does not prevent a local governing body from prohibiting the use of property as a short-term rental unit when the unit has violated applicable local laws three or more separate times, and the owner has no appeal rights remaining. The burden of proof to show a violation of the applicable local laws occurred is on the local governing body. T. C. A. § 13-7-604(a).

### **Permitting Process.**

T. C. A. § 13-7-604(b) allows a local governing body to authorize short-term rental units through a permitting or application process. If the local governing body authorizes short-term rental units through a reasonable permitting or application process, it may suspend the continued use of the property as a short-term rental unit when the unit does not maintain a permit or approved application.

If the local governing body accepts complaints about the operation of short-term rental units, it must notify all complainants any false complaints are punishable under T. C. A. § 39-16-702.

T. C. A. § 13-7-604 further provides that if the local governing body prohibits, suspends, or otherwise regulates property used as a short-term rental unit that is also subject to T. C. A. § 13-7-603(a) (the above-mentioned legacy clause), the owner may challenge the prohibition, suspension, or regulation as in conflict with this part through a civil action or appeal in the chancery or circuit court.

### **Restricting the Use of Property as Short-Term Rental Units**

T. C. A. § 13-7-605 provides:

1. A condominium, co-op, homeowners' association, or other similar entity may prohibit or restrict an owner of property from using the owner's property as a short-term rental unit as provided for in the entity's governing documents;
2. A lessor, through terms of the lease agreement, may restrict the use of the property as a short-term rental unit; and
3. A property owner may place a restrictive covenant or easement on the property that restricts the future use of the property as a short-term rental unit as authorized under existing law.

### **Preemption**

T. C. A. § 13-7-606 provides that the act supersedes any regulation or other requirement of any type enacted, maintained, or enforced by the local governing body that conflicts with the act.

Counties may take the following steps to adopt a reasonable permitting process for short-term rentals:

1. Develop reasonable regulations governing the use and permitting process for short-term rental units that do not conflict with T. C. A. § 13-7-601 *et. seq.* (Example – Sevier County Short-Term Rental Inspection Program)
2. Obtain approval from the county legislative body.
3. Implement regulations and permitting process.

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