

Chapter 61
ONEIDA ROOM TAX LAW
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hotel where they collect money there laws

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61.1-1. Purpose and Policy. It is the purpose of this law to impose a tax, either as the primary taxing government or through concurrent jurisdiction, upon transient occupancy in any hotel or motel within the exterior boundaries of the Oneida Reservation or otherwise under the jurisdiction of the Oneida Tribe of Indians of Wisconsin and to provide a means for the collection thereof.

61.1-2. It is the policy of this law to clarify jurisdictional sovereignty and to generate revenue for the Oneida Nation.

61.2-1. Adoption, Amendment, Repeal. This law is adopted by the Oneida Business Committee by resolution # BC-9-17-97-E.

61.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or Oneida General Tribal Council.

61.2-3. 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.

61.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically re-enacted after adoption of this policy.

61.3-1. Definitions. This Article shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

61.3-2. Person. "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.

61.3-3. Hotel. "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.

61.3-4. Transient. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty 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 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 days occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this ordinance may be considered.

61.3-5. Rent. "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.

61.3-6. Operator. "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 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 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.

61.3-7. Oneida Tribe. "Oneida Tribe" means the Oneida Tribe of Indians of Wisconsin.

61.3-8. Tax Collector. "Tax Collector" means the office with the delegated responsibility to collect the taxes imposed by this law, to deposit those taxes in the general treasury of the Oneida Tribe of Indians of Wisconsin, and to develop regulations and forms to assist in implementing and enforcing this law.

61.3-9. Local Government. "Local government" means those governments created under the authority of the State of Wisconsin.

61.4-1. Tax Imposed. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the Oneida Tribe which is extinguished only by payment to the operator. The transient shall pay the tax to the operator of the hotel 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. If for any reason the tax due is not paid to the operator of the hotel, the tax collector may require that such tax shall be paid directly to the tax collector.

61.4-2. **Exemptions.** No tax shall be imposed upon:

- (a) Any person as to whom, or any occupancy as to which, it is beyond the power of the Oneida Tribe to impose the tax herein provided;
- (b) Any federal or state officer or employee when on official business;
- (c) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

No exemption shall be granted except upon a claim therefore made at the time rent is collected upon a form prescribed by the tax collector.

61.4-3. This tax shall be imposed as set out herein, provided that in no cases shall the total amount paid in taxes be less than eight percent. The Oneida Tribe recognizes the concurrent jurisdiction of other local governments within the exterior boundaries of the Reservation of the Oneida Tribe and as such shall impose no greater aggregate tax of eight percent on those hotels within that concurrent jurisdiction. In all other cases, the Oneida Tribe shall impose a tax of eight percent, provided that

any tax less than eight percent assessed by a local government, that has been paid, shall be deducted from that amount owed.

6 1.5-1. Operator's Duties. 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 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 except in the manner hereinafter provided.

61.5-2. Registration. Within thirty days after the effective date of this law, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients 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 hotel 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 will all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the Oneida Tribe or local government. This certificate does not constitute a permit."

61.5-3. 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 Oneida Tribe until payment thereof is made to the tax collector.

61.5-4. Penalties and Interest.

- (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 of the amount of the tax in addition to the amount of the tax.
- (b) *Continued Delinquency.* Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.
- (c) *Fraud.* If the nonpayment of any remittance due under this law is due to fraud, a penalty

of twenty-five 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 penalties imposed, any operator who fails to remit any tax imposed by this law shall pay interest at a rate of one-half percent 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 be come part of the tax herein required to be paid.

61.5-5. **Failure to Collect and Report Tax; Determination of Tax by Tax Collector.** If any operator shall fail or refuse to collect said tax 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 proceed in such a manner as the tax collector may deem best to obtain facts and information on which to base the estimate of the tax due. As soon as the tax collector shall procure such facts and information as the tax collector 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, the tax collector shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this law. In case such determination is made, 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 so assessed at his last known address. Such operator may within ten days after the serving or mailing of such notice make application in writing to the tax collector for a hearing on the amount assessed. If the application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the tax collector shall become final and conclusive, and immediately due and payable. If such application is made, the tax collector shall give not less than five days written notice in the manner prescribed herein to the operator to show cause at a hearing at a time and place fixed in said notice why said amount specified there should not be fixed for such tax, interest, and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so affixed. After such hearing, the tax collector 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 days, unless an appeal is taken as provided in section sec. 5-6 of this law.

61.5-6. **Appeal.** Any operator 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 Oneida Appeals Commission by filing a notice of appeals with the Oneida Appeals Commission within fifteen days of the serving or mailing of the determination of tax due. The Oneida Appeals Commission shall fix a time and place for such hearing within its procedures regarding administrative hearings. The findings of the Oneida Appeals Commission shall be final and conclusive and shall be serviced 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 the service of notice.

61.5-7. **Records.** It shall be the duty of every operator liable for the collection and payment to the Oneida Tribe of any tax imposed by this law to keep and preserve, for a period of three years, all

records as may be necessary to determine the amount of such tax as the operator may have been liable for the collection and payment to the Oneida Tribe, which records the tax collector shall have the right to inspect at all reasonable times.

61.5-8. 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 Oneida Tribe under this law it may be refunded as provided in subparagraphs (b) and (c) of this section provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax collector within one 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 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 \$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 Oneida Tribe by filing a claim in the manner provided in subparagraph (a) of this section, 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 right thereto by written records showing entitlement thereto.

61.5-9. Actions to Collect. Any tax required to be paid by any transient under the provisions of this law shall be deemed a debt owned by the transient to the Oneida Tribe. Any such tax collected by an operator which has not been paid to the Oneida Tribe shall be deemed a debt owned by the operator to the Oneida Tribe. Any person owing money to the Oneida Tribe under the provisions of this law shall be liable in an action brought in the name of the Oneida Tribe for the recovery of such amount filed with the Oneida Appeals Commission.

61.5-10. Penalty. Any person, firm or corporation violating any provision of this law shall be fined not less than five dollars nor more than one hundred dollars for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

End.

Adopted - BC-9-17-97-E

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