

ADOPTED

MAR 08 2022

ORDINANCE NO. 107A-73

Board of Supervisors  
James City County, VA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, TAXATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING AND RENAMING ARTICLE IV, TRANSIENT LODGING TAX WITH NEW NAME TRANSIENT OCCUPANCY TAX; BY AMENDING SECTION 20-14, TAX LEVIED; SECTION 20-15, DEFINITIONS; SECTION 20-16, COLLECTION PROCEDURE; SECTION 20-17, REPORTS AND REMITTANCE OF TAX COLLECTED; BY AMENDING AND RENAMING SECTION 20-18, INTEREST AND PENALTIES UPON FAILURE OR REFUSAL TO REMIT TAX WITH NEW NAME INTEREST AND PENALTIES UPON FAILURE OR REFUSAL TO REPORT OR REMIT TAX; AND BY AMENDING SECTION 20-20, RECORDS TO BE KEPT BY PERSON LIABLE FOR COLLECTION AND PAYMENT OF TAX; SECTION 20-21, TAX IMMEDIATELY DUE AND PAYABLE UPON CESSATION OF BUSINESS; AND SECTION 20-22, EXEMPTIONS FROM TAX.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Taxation, is hereby amended and reordained by amending Article IV, Transient Occupancy Tax, by amending Section 20-14, Tax levied; Section 20-15, Definitions; Section 20-16, Collection procedure; Section 20-17, Reports and remittance of tax collected; Section 20-18, Interest and penalties upon failure or refusal to report or remit tax; Section 20-20, Records to be kept by person liable for collection and payment of tax; Section 20-21, Tax immediately due and payable upon cessation of business; and Section 20-22, Exemptions from tax.

### **Chapter 20. Taxation**

#### **Article IV. Transient ~~Lodging~~ Occupancy Tax**

##### **Sec. 20-14. Tax levied.**

- (a) There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by laws, on each transient a tax equivalent to five percent of the total ~~amount~~ *price* paid for ~~lodging~~ *the use or possession of any accommodations* by or for any such transient to any ~~hotel accommodations provider~~. Such tax shall be collected from such transient at the time and in the manner provided by this article.
- (b) In addition to the tax provided for in subsection (a) above, as provided in section 58.1-3823(C) of the Virginia Code, there is hereby levied and imposed an additional transient occupancy tax of \$2.00 per room *per night* for the ~~occupancy~~ *use or possession* of any overnight guest room rented by a transient. Such additional tax shall be collected from such transient at the time and in the manner provided by

this article. Of the revenues generated by this tax, one-half of the revenues shall be deposited into the Historic Triangle Marketing Fund, created pursuant to section 58.1-603.2 (E)(1) of the Virginia Code, and one-half of the revenues shall be retained by the county.

### Sec. 20-15. Definitions.

The following words and phrases, when used in this article, shall, for the purposes of this article, have the following respective meanings, except when the context clearly indicates a different meaning:

*Advertising the Historic Triangle Area.* Advertising that is intended to attract visitors from a sufficient distance so as to require an overnight stay of at least one night.

~~*Hotel Accommodations.* Any room or rooms, lodgings, or accommodations in any public or private hotel, inn, hostelry, tourist home or house, motel, rooming house, travel campground or tourist camps, or any other lodging place within the county offering lodging, as defined herein, for compensation, in which rooms, lodging, space, or accommodations are regularly furnished to any transient as defined herein for consideration.~~

*Accommodations fee.* The room charge less the discount room charge, if any, provided that the accommodations fee shall not be less than \$0.

*Accommodations intermediary.* Any person other than an accommodations provider that facilitates the sale of an accommodation, charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations via a transaction directly, including via one or more payment processors, between a customer and an accommodations provider. However, "accommodations intermediary" does not include a person:

1. If the accommodations are provided by an accommodations provider operating under a trademark, trade name, or service mark belonging to such person; or
2. Who facilitates the sale of an accommodation if (i) the price paid by the customer to such person is equal to the price paid by such person to the accommodations provider for the use of the accommodations, and (ii) the only compensation received by such person for facilitating the sale of the accommodation is a commission paid from the accommodations provider to such person.

*Accommodations provider.* Any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

*Commissioner.* The commissioner of the revenue of the county or his authorized designee.

*Discount room charge.* The full amount charged by the accommodations provider to the accommodations intermediary, or an affiliate thereof, for furnishing the accommodations.

*Individual.* One or more natural persons.

~~*Lodging.* Space or room furnished any transient, including the total charge made for the use or possession of the accommodations by any hotel for room or space furnished any transient. If the charge made by such hotel to such transient includes any charge for services or accommodations in addition to that of lodging and/or the use of space, then such portion of the total charges as represents only room and/or space rental shall be distinctly set out and billed to such transient by such hotel as a separate item.~~

*Person.* Any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise; and any combination or group of individuals acting as a unit.

*Room charge.* The full retail price charged to the customer by the accommodations intermediary for the use of the accommodations, including any accommodations fee, before taxes.

*Transient.* Any individual or group of same individuals who, for a period of fewer than 30 consecutive days, either at his own expense, or at the expense of another, obtains ~~lodging at any hotel~~ accommodations as defined herein.

*Treasurer.* The treasurer of the county or his authorized designee.

#### **Sec. 20-16. Collection procedure.**

- (a) For any sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider shall collect the tax imposed pursuant to this article. The accommodations provider shall separately state the amount of the tax in the bill, invoice, or similar documentation and shall add the tax to the total price paid for the use or possession of the accommodations.
- (b) For any sale of accommodations facilitated by an accommodations intermediary, the accommodations intermediary shall collect the tax imposed pursuant to this article, computed on the room charge. The accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room charge; thereafter, such tax shall be a debt from the customer to the accommodations intermediary, recoverable at law in the same manner as other debts.
- (c) If the total price paid or room charge for the accommodations includes any charge for services in addition to those related to the accommodations or the use or possession of space, then such portion of the total price paid or room charge as represents only the amounts related to the use or possession of room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes shall be distinctly set out and billed to such transient by such accommodations intermediary or accommodations provider as a separate item.
- (d) Consistent with the provisions of this section, ~~Every person~~ accommodations intermediary or accommodations provider receiving any payment for ~~lodging~~ accommodations with respect to which a tax is levied under this article shall collect the amount of such tax so imposed from the transient on whom such tax is levied or from the person paying for such ~~lodging~~ accommodations at the time payment for such ~~lodging~~ accommodations is made. The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect such taxes until remitted as required in this article.

#### **Sec. 20-17. Reports and remittance of tax collected.**

- (a) It shall be the duty of every ~~seller~~ accommodations intermediary and accommodations provider in acting as the tax collection medium or agency for the county to collect from the purchaser, for the use of the county, the tax hereby imposed and levied at the time of collecting the ~~purchase price charged paid for the lodging~~ accommodations. The responsibility for remittance of the tax collected pursuant to Sec. 20-16 shall be as follows:
  - (1) For any sale of accommodations facilitated by an accommodations intermediary at a hotel, the accommodations intermediary shall remit the taxes on the accommodations fee to the county and any remaining taxes to the hotel, and the hotel shall remit such remaining taxes to the county.

*An accommodations intermediary shall not be liable for taxes under this article remitted to a hotel but that are then not remitted to the county.*

- (2) *For any sale of accommodations facilitated by an accommodations intermediary at accommodations other than a hotel, the accommodations intermediary shall remit all taxes to the county.*
  - (3) *For any sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider shall remit all taxes to the county.*
- (b) Every ~~seller~~ *accommodations intermediary and accommodations provider* with respect to which a tax is levied under this article shall make out a report, upon such forms and setting forth such information as the commissioner ~~of the revenue~~ may prescribe and require, showing the amount of tax required to be collected. Every ~~seller~~ *accommodations intermediary and accommodations provider* shall sign and deliver the following items to the commissioner ~~of the revenue~~ before the twentieth day of each month: (1) such report as is required by the commissioner ~~of the revenue~~ covering the taxes collected during the preceding calendar month, and (2) a remittance of such tax in a form payable to the treasurer. The taxes collected by an ~~seller~~ *accommodations intermediary or accommodations provider* shall be deemed to be held in trust by such seller until they have been remitted to the county.
- (bc) Any ~~seller~~ *accommodations intermediary or accommodations provider* collecting the tax on transactions exempt or not taxable under this article shall transmit such erroneously or illegally collected tax in accordance with this section unless and until he can affirmatively show that the tax has since been refunded to the purchaser or credited to ~~his~~ *their* account.

**Sec. 20-18. Interest and penalties upon failure or refusal to report or remit tax.**

- (a) *If any person shall fail or refuse to file a report required to be filed by this article within the time specified, the commissioner shall assess a penalty of ten percent to the tax owed for each such failure or refusal to file a report, which penalty shall become part of the tax owed at the time the penalty is assessed. No such penalty shall exceed the amount of the tax owned.*
- (b) *If any person shall fail or refuse to remit to the treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax by the treasurer a penalty in the amount of ten percent of the tax past due, ~~or \$10.00 whichever is greater~~; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. ~~and~~ *The treasurer shall also add interest thereon at the rate of ten percent per annum, which shall be computed upon the taxes and penalty from the date such taxes are due and payable.**

**Sec. 20-20. Records to be kept by person liable for collection and payment of tax.**

It shall be the duty of every person liable for the collection ~~and~~ *or* payment to the county of any tax imposed by this article to keep and ~~to~~ preserve, for a period of four years, ~~such suitable~~ *the records as may be necessary to determine and show accurately the amount of such tax as he they may have been responsible for collecting and paying to the county. The commissioner may inspect such records at all reasonable times.*


**Sec. 20-21. Tax immediately due and payable upon cessation of business.**

Whenever any person required to collect ~~and~~ *or* remit the tax imposed and levied by this article shall go out of business, dispose of ~~his~~ *the* business, or otherwise cease to operate, all ~~such~~ taxes collected ~~or payable under this article~~ shall thereupon be reported and remitted as required by this article.


**Sec. 20-22. Exemptions from tax.**

No tax shall be payable under this article on charges for ~~lodging~~ accommodations paid to any hospital, medical clinic, convalescent home, home for the aged or paid by or for any individual or group of same individuals, ~~as defined in section 20-15(f)~~, who obtains ~~lodging at any hotel,~~ accommodations for a period of 30 or more consecutive days.

BE IT FURTHER ORDAINED by the Board of Supervisors of the County of James City, Virginia, that this Ordinance shall be effective retroactive to, and including, September 1, 2021, in order to comply with 2021 Va. Acts (Special Session I), Ch. 383.

  
John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

  
Teresa J. Sneed  
Deputy Clerk to the Board

	VOTES			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
ICENHOUR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HIPPLE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LARSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SADLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MCGLENNON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of March, 2022.