

**EXHIBIT A****CHAPTER 6.04 - TRANSIENT LODGINGS  
TAX**

(Chapter replaced by Ordinance No. 161506,  
effective January 1, 1989.)

**Sections:**

- 6.04.010 Definitions.
- 6.04.020 Tax Imposed.
- 6.04.025 Administrative Authority.
- 6.04.030 Collection of Tax by Operator.
- 6.04.040 Booking Agent and Operator's Duties.
- 6.04.050 Exemptions.
- 6.04.060 Registration of Operator; Form and Contents; Certification of Authority.
- 6.04.070 Due Date; Returns and Payments.
- 6.04.080 Penalties and Interest.
- 6.04.090 Deficiency Determination; Fraud, Evasion, Operator Delay.
- 6.04.100 Redeterminations.
- 6.04.110 Security for Collection of Tax.
- 6.04.120 Credits or Refunds.
- 6.04.130 Administration and Recordkeeping.
- 6.04.140 Business License Appeals Board; Hearings Officer; Appeal; Rules.
- 6.04.150 Appeal to Business License Appeals Board, Hearings Officer.
- 6.04.155 Appeal of Penalty or Interest Assessments.
- 6.04.165 Presumptive Tax for Failure to Register or File Returns.
- 6.04.170 Civil Penalties for Violations of this Chapter.

**6.04.010 Definitions.**

(Amended by Ordinance Nos. 162647, 186985, 187339 and 188170, effective January 20, 2017.) Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter.

- A. **"Accrual Accounting"** means the Operator enters the Rent due from a Transient on their records when the Rent is earned, whether or not it is paid.
- B. **"Booking Agent"** means any Person that provides a means through which a Host may offer a Short-Term Rental for transient lodging occupancy. This service is usually, though not necessarily, provided through an online platform and generally allows a Host to advertise the Short-Term Rental through a website provided by the Booking Agent's hosting platform and provides a means for potential users to arrange transient lodging occupancy and payment, whether the transient pays rent directly to the Host or to the Booking Agent. Booking Agents include, but are not limited to:

1. Online travel booking sites which are involved in the process of listing and booking Short-Term Rental transient lodging occupancies and handle any aspect of the resulting financial transaction; or
  2. Online travel booking sites for Short-Term Rental transient lodging occupancy where advertisements of Short-Term Rental transient lodging occupancy rentals are displayed; or
  3. A hosting or other online site that provides a means through which an Operator, Host or agent may offer a Short-Term Rental unit for transient lodging occupancy; or
  4. Any Person who lists commercial Hotel rooms or long-term rentals for transient lodging occupancy; or
  5. Any Person who directly or indirectly accepts, receives or facilitates payment, whether or not they are the ultimate recipient of the payment, including through Application Programming Interfaces (APIs) or other computerized devices where third party providers receive information about a transaction and collect funds for the transient lodging occupancy from a Transient.
- C. **“Division”** means the Revenue Division of the Bureau of Revenue and Financial Services of the City of Portland.
- D. **“Director”** means the director of the Revenue Division, or designee.
- E. **“Business License Appeals Board”** means the Board composed of five representatives appointed in the manner set forth in Section 7.02.295 of this Code.
- F. **“Cash Accounting”** means the Operator does not enter the Rent due from a Transient on their records until Rent is paid.
- G. **“Host”** means the owner or person who resides at a Short-Term Rental or has been designated by the owner or resident of the Short-Term Rental and who rents out the Short-Term Rental for transient lodging occupancy either directly or through the use of a Booking Agent.
- H. **“Hotel”** means any structure, or any portion of any structure which is used, occupied, intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes, but is not limited to, any hotel, inn, tourist home or house, motel, studio hotel, boutique hotel, lodging house, rooming house, apartment house, single family house or any portion of such house, duplex, condominium, bed and breakfast facility, vacation home, multi-dwelling structure, accessory dwelling unit, trailer home, houseboat, public or private dormitory, hostel, fraternity, sorority, public or private club, corporate housing or executive housing space or facility, and also means space in a mobile home or trailer park or portion thereof so occupied, provided such occupancy is for less than

a 31-day period. All Hotels must comply with all local codes applicable to their location and use, including but not limited to zoning and building codes.

**I. “Occupancy”** means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any Room, Rooms or portion thereof in a Hotel as defined above.

**J. “Operator” means:**

1. Any Person who provides one or more Rooms for Occupancy for periods of 30 days or less to the general public for compensation. Furnishing accommodations can be done via employees, contractors, agents or any other person the Hotel consents to allow to process reservations and accept payments from the Transient on behalf of the Hotel; or
2. Any Person that facilitates the reservation of an accommodation and collects the payment for the Room reservation from the Transient; or
3. Any Transient Lodging Provider, Transient Lodging Intermediary or Transient Lodging Tax Collector as defined in ORS 320.300; or
4. A Booking Agent as defined in this Chapter.

There may be more than one Operator for a Hotel and each Operator is independently responsible for compliance with this Chapter though the tax will only be collected once. Operators include, but are not limited to, the Hotel owner and/or management, online travel companies, Booking Agents or other online travel facilitators, travel agents or companies, contracted management companies or any other Person that secures the right to occupy a Room on behalf of the Transient and receives payment from the Transient for that right whether or not the Operator is the ultimate recipient of the payment.

**K. “Person”** means any individual, firm, partnership, joint venture, limited liability company, corporation, limited liability partnership, association, host, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

**L. “Rent”** means the full consideration charged to the Transient for the right to occupy a Room in a Hotel, valued in money, goods, gift cards, labor, credits, property or other consideration of value without any deduction. Rent is considered to be the total amount represented to the Transient by an Operator as the consideration charged for the Occupancy including any accommodation fees, commissions or similar amounts paid to or withheld by a Person that facilitates the reservation of a Room.

- M.** “**Rent Package Plan**” means the consideration charged for both food and Rent where a single rate is made for the total of both. The amount applicable to Rent for determination of transient room tax under this Chapter is considered the same charge made for Rent of the identical room when it is not a part of a package plan.
- N.** “**Room**” means each portion of a Hotel which may be rented or is intended to be rented to a separate transient lodger or lodging party, other than rooms containing no sleeping accommodations and intended to be used for purposes other than sleeping and living accommodations, such as meetings, recreation, education, business or other purposes. In rooms with multiple beds where each bed may be rented or is intended to be rented to a separate transient lodger, such as bunk or dormitory style rooms, each bed is counted as a room.
- O.** “**Short-Term Rental**” means a house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling where a person rents guest bedrooms for transient lodging Occupancy. Generally, a Short-Term Rental is zoned residential or has a building occupancy that only allows for residential use.
- P.** “**Short-Term Rental Registry**” means Short-Term Rentals that have valid, current Type A or Type B Accessory Short-Term Rental permits as required by Chapter 33.207 and that are recorded in the City’s Portland Maps or successor database platform publicly available on the City’s website. A copy of the Registry shall be made available to any person upon request.
- QP.** “**Tax**” means either the tax payable by the Transient or the aggregate amount of taxes due from an Operator during the period for which the Operator is required to report their collections.
- RQ.** “**Transient**” means any individual who exercises Occupancy or is entitled to Occupancy in a Hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a Transient checks out of the Hotel is not included in determining the 30-day period if the Transient is not charged rent for that day by the Operator. Any such individual so occupying space in a Hotel is deemed to be a Transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of Occupancy, and the tenancy actually extends more than 30 consecutive days.

**6.04.020 Tax Imposed.**

(Amended by Ordinance No. 188170, effective January 20, 2017.) For the privilege of Occupancy in any Hotel, each Transient shall pay a tax in the amount of 6 percent of the Rent charged by the Operator. The Tax constitutes a debt owed by the Transient to the City, which is extinguished only by payment by the Operator to the City. The Transient shall pay the Tax to the Operator of the Hotel at the time the Rent is paid. The Operator must enter the tax on their records when Rent is collected if the Operator keeps their records on the Cash Accounting basis and when earned if the Operator keeps their records on the Accrual Accounting basis. If Rent is paid in installments, a proportionate share of the tax

must be paid by the Transient to the Operator with each installment. In all cases, the Rent paid or charged for Occupancy may exclude the sale of any goods, services and commodities, other than charges associated with furnishing rooms, including but not limited to cleaning fees, non-refundable deposits, reservation or service fees.

**6.04.025 Administrative Authority.**

(Added by Ordinance No. 188170, effective January 20, 2017.)

- A. The Revenue Division administers this Chapter. Nothing in this Chapter precludes the disposition of a controversy by stipulation or agreed settlement, through correspondence or a conference with the Director.
- B. The Director may implement procedures, forms and written policies for administering the provisions of this Chapter.
- C. The Director may adopt rules relating to matters within the scope of this Chapter or to obtain compliance with this Chapter.
- D. Before adopting a new rule, the Director must hold a public hearing. Prior to the hearing, the Director must mail notice of the public hearing to each Operator currently registered with the Division at the last known mailing address provided or post the rule on the City of Portland website. The notice must be mailed not less than 10 nor more than 30 days before the hearing. Such notice must include the place, time and purpose of the public hearing, a brief description of the subjects covered by the proposed rule and the location where copies of the full text of the proposed rule may be obtained.
- E. At the public hearing, the Director must accept oral or written testimony concerning the proposed rule. The Director will either adopt the proposed rule, modify it or reject it, taking into consideration the testimony received during the public hearing.

**6.04.030 Collection of Tax by Operator.**

(Amended by Ordinance Nos. 187339 and 188170, effective January 20, 2017.)

- A. Operators must collect a Tax from the Transient. The Tax collected or accrued by the Operator constitutes a debt owing by the Operator to the City.
- B. In cases of deferred payment of Rent, the payment of Tax to the Operator may be deferred until the Rent is paid, and the Operator shall not be liable for the Tax until credits are paid or deferred payments is made. Adjustments may be made for uncollectible Rent where appropriate.

**6.04.040 Booking Agent and Operator's Duties.**

(Amended by Ordinance Nos. 186985, 187339, 188170 and 188501, effective July 5, 2017.)

- A. Operators must collect the Tax imposed by this Chapter at the same time as the Rent is collected from every Transient. The amount of Tax must be separately

stated upon the Operator's records, and any receipt rendered by the Operator. If a single amount is stated on the Operator's records or receipts without a breakout between Rent and Tax, the Division will deem the entire amount is Rent and Tax will be calculated on the total amount. No imputation of Tax is permitted. No Operator may advertise that the Tax or any part of the Tax will be assumed or absorbed by the Operator, or that it will not be added to the Rent, or that, when added, any part will be refunded, except in the manner provided by this Chapter.

- B. Upon request of the Division for any regulatory or tax administration purpose or upon issuance of a subpoena in accordance with this Chapter, Operators must provide all physical addresses of transient lodging occupancy locations within Portland city limits and the related contact information, including the name and mailing address of the general manager, agent, owner, Host or other responsible Person for the location. Any location and related contact information provided under this Subsection is considered confidential and is not subject to public disclosure due to personal privacy concerns.
- C. Booking Agents or Operators shall not complete any booking transaction or collect Rent for any Short-Term Rental unless it is listed in the City's Short-Term Rental Registry at the time the Booking Agent or Operator receives a fee or Rent for the booking transaction. An exception to this requirement is if the Booking Agent or Operator has entered into a pass-through registration data-sharing agreement in a form acceptable to and approved by the Revenue Division Director.
- D. Booking Agents or Operators shall not collect or receive a fee or any portion of Rent, directly or indirectly through a Person, agent or intermediary, for facilitating or providing services ancillary to a vacation rental, or Short-Term Rental that is not in the Short-Term Rental Registry, including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit. An exception to this requirement is if the Booking Agent or Operator has entered into a pass-through registration data-sharing agreement in a form acceptable to and approved by the Revenue Division Director.

#### **6.04.050 Exemptions.**

(Amended by Ordinance Nos. 162647 and 188170; effective January 20, 2017.) No tax imposed under this Chapter shall be imposed upon:

- A. Any occupant for more than 30 successive calendar days (a Person who pays for lodging on a calendar month basis, irrespective of the number of days in such a month, shall not be deemed a Transient);
- B. Any occupant in a hospital room, medical or mental health facility, convalescent home, skilled nursing facility, assisted living facility, foster home, rehabilitation center or a government owned and operated public institution.

- C. Any Person housed through an emergency shelter or disaster program where the Rent is paid with government assistance funds;
- D. Any Federal Government employee traveling on official government business, who presents an official Government Exemption Certificate or official travel authorization. An exemption may also be granted for direct bills to a Federal Government department, agency or instrumentality. An exemption may not be granted for Rents paid by contractors of the Federal Government, even if the Occupancy was for a Federal Government employee on official business, and notwithstanding the fact that such Rents may be reimbursed by the Federal Government or paid under the contract with the Federal Government.

**6.04.060 Registration of Operator; Form and Contents; Certification of Authority.**

(Amended by Ordinance Nos. 186736, 187339 and 188170, effective January 20, 2017.)

- A. Person engaging or about to engage in business as an Operator in this City must register with the Division on a form provided by the Division. Operators starting business must register within 15 calendar days after commencing business. The failure to register with the Division does not relieve any Person from the obligation of payment or collection of Tax. Registration must state the name under which an Operator transacts or intends to transact business, any affiliated companies or brands that are associated with the registration, the location of the place of business and such other information necessary to facilitate the collection of the Tax as the Division may require. The Operator must sign the registration form.
- B. Within 10 days after registration, the Division will issue a Certificate of Authority and establish an account to collect the tax from the Transient. Certificates of Authority are non-assignable and non-transferable and will be returned to the Division upon the cessation of business or business sale or transfer at the location listed on the certificate, if applicable. Certificates of Authority must be prominently displayed so as to be seen by all occupants and persons seeking occupancy. If the Rent transaction is facilitated online, the Certificate of Authority must be able to be viewed by the Transient by clicking on link to the Certificate of Authority at a reasonable place during the payment transaction.
- C. The Certificate of Authority will include at least the following:
  - 1. The name of the Operator;
  - 2. The date the certificate was issued;
  - 3. "This Transient Occupancy Registration Certificate signifies that the person named has fulfilled the requirements of the Transient Lodgings Tax Chapter of the City of Portland for the purpose of collecting and remitting the lodgings tax. This certificate does not authorize any Person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a Hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board,

commission, department or office of the City of Portland. This certificate does not constitute a permit.”

- D.** Hosts of Type A and Type B Accessory Short-Term Rentals must comply with the requirements of Chapter 33.207. In addition, all Operators of Type A and Type B accessory Short-Term Rentals as described in Chapter 33.207 must prominently display the Type A Permit Number or Type B Conditional Use case file number, as applicable, in all advertising and other listing services. No Operator will advertise or otherwise represent that an accessory Short-Term Rental is available for Occupancy unless all applicable legal requirements allowing the Occupancy of a Short-Term Rental has been met and the Operator has registered with the Division as required above. Additionally, this Permit Number, Conditional Use case file number or other number issued directly by the Division must be prominently displayed in the rental unit so as to be seen by all short-term occupants.

**6.04.070 Due Date; Returns and Payments.**

(Amended by Ordinance Nos. 187339 and 188170, effective January 20, 2017.)

- A.** The tax imposed by this Chapter must be paid by the Transient to the Operator at the time that Rent is paid. All amounts of such taxes collected by any Operator are due and payable to the Division on or before the last day of the following month for the preceding 3 months. If the due date falls on a Sunday or legal holiday as defined by ORS 187.010, amounts are delinquent on the first business day that follows. Payments and returns received or postmarked before the first business day that follows will be deemed to have been received on the due date. The Division has authority to classify and/or district Operators for determination of applicable tax periods, and will notify each Operator of the due dates for returns.
- B.** On or before the last day of the month following each quarter of collection, or month of collection if an Operator is required or elects to file monthly returns, a return for the preceding period’s tax collections must be filed with the Division. The return must be filed in such form as the Division may prescribe for payment of the tax.
- C.** Returns must show the amount of tax collected or otherwise due for the related period. The Division may require returns to include additional information to explain the tax calculation.
- D.** The Person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the Division at its office, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.
- E.** For good cause, the Division may extend for 1 month the time for making any return or payment of tax. No further extension will be granted, except by the Director. Any Operator to whom an extension is granted will pay interest at the rate of 1.25 percent per month on the amount of tax due without proration for a portion of a



month or reduction for any prepayments or credits available. If a return is not filed, and the tax and interest due is not paid by the end of the extension period, then the interest will be added to the tax due for computation of penalties and additional interest described elsewhere in this Chapter.

- F. The Division, if deemed necessary in order to ensure payment or facilitate collection by the City of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than quarterly periods. If an Operator is required to report on a more frequent basis, the Division will provide a schedule showing the tax periods, due dates and delinquent dates.

**6.04.080 Penalties and Interest.**

(Amended by Ordinance Nos. 187339 and 188170, effective January 20, 2017.)

- A. **Original delinquency.** Any Operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Chapter on or before the due date will pay a penalty of 10 percent of the tax due in addition to the tax. There is no grace period between the due date and the assessment of a penalty and interest; the day following the due date is considered to be the delinquent date.
- B. **Continued delinquency.** Any Operator who fails to pay in full on or before the due date of an original delinquency notice will pay a second delinquency penalty of 15 percent of the amount of the tax due plus all penalty and interest assessments at the time of the continued delinquency calculation.
- C. **Fraud.** If the Division determines that the nonpayment of any amount due under this Chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the tax will be added in addition to the penalties stated in paragraphs A. and B. of this Section and interest stated in paragraph D. of this Section. This penalty is calculated on the entire amount due, including any penalties and interest previously assessed at the time of the calculations.
- D. **Interest.** In addition to the penalties imposed, any Operator who fails to file or pay any tax imposed by this Chapter will pay interest at the rate of 1 percent per month or fraction thereof without proration for portions of a month, on the amount of the tax due from the first day following the original due date. Interest will be compounded monthly until the amount due is paid in full.
- E. **Penalties and interest merged with tax.** Every penalty imposed and such interest as accrues under the provisions of this Section will be merged with and become a part of the tax required to be paid. If delinquency continues, requiring additional penalty and interest calculations, previously assessed penalty and interest are added to the tax due. This amount becomes the new base for calculating new penalty and interest amounts. This merging continues each month until the full balance is paid.
- F. **Petition for waiver.** Any Operator who fails to pay the tax within the time stated must pay the tax, penalties and interest assessed; however, the Operator may

petition the Director for waiver and refund or credit of all or part of the penalty assessed and the Director may, if a good and sufficient reason is shown, waive some or all of the penalty assessment. Interest will not be waived except by written policy.

- G.** Any violation of Subsections 6.04.040 C. or D., Booking Agent and Operator Duties, shall be subject to a civil penalty of \$1,000 per violation per day. Each booking transaction or fee collected shall be considered a separate violation.

**6.04.090 Deficiency Determination; Fraud, Evasion, Operator Delay.**

(Replaced by Ordinance No. 184772; amended by Ordinance Nos. 187339 and 188170, effective January 20, 2017.)

- A.** Deficiency determinations. If the Division determines that a return is incorrect, that required reports or returns have not been filed, or that an Operator has otherwise failed to comply with the terms of the Code, it may compute and determine or estimate the amount required to be paid based on the facts contained in the return or returns or any other information reasonably within its possession. Once a deficiency determination is made, the amount is due and payable within ten days. The Division may assess penalties and interest as set forth in Section 6.04.080.
1. In making a deficiency determination, the Division may offset overpayments, if any, which may have been previously made against any deficiency for a subsequent period or periods, or against penalties and interest on the deficiency.
  2. The Division must give to the Operator or Transient (in the case of a refund request) a written notice of its deficiency determination. The notice may be served personally or by mail. If by mail, the notice will be addressed to the Operator at the address as it appears on the records of the Division or as the Division can best determine if the Operator has not provided that information to the Division. In case of service by mail or any notice required by this Chapter, the service is complete at the time of deposit with the United States Post Office.
  3. Any deficiency is due and payable within 10 days. The Operator or Transient (in the case of a refund request) may petition for a redetermination if the petition is filed within 10 days of service as provided in Section 6.04.100. Nothing prohibits the Division from extending the time for petition beyond 10 days at its sole discretion.
  4. Every deficiency determination must be made and notice mailed within 5 years after a return was originally filed, subsequently amended or the tax was paid, whichever period expires later. In the case of the filing of a false or fraudulent return with the intent to evade this Chapter, a failure to file a required return, or willful refusal to collect and remit the tax, a deficiency

determination may be made, or a proceeding for the collection of such deficiency may be commenced, at any time and is not subject to the 5 year limitation above.

- B. Operator delay. If the Division believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or if any deficiency determination will be jeopardized by delay, the Division may make a deficiency determination of the tax or amount of tax required to be collected, noting the fact upon the deficiency determination. The amount so determined is immediately due and payable, and the Operator will immediately pay such determination to the Division after service of notice thereof; provided, however, the Operator may petition, after payment has been made, for a redetermination of the Division's assessment, if the petition is filed within 10 days from the date of the written notice from the Division.

#### **6.04.100 Redeterminations.**

(Amended by Ordinance Nos. 184772, 187339 and 188170, effective January 20, 2017.)

- A. Any Person against whom a deficiency determination is made under Section 6.04.090 or civil penalties assessed under Section 6.04.170 may petition for a redetermination within the time required in Section 6.04.090. The deficiency determination becomes final at the expiration of the allowable time.
- B. If a petition for redetermination is filed within the time provided in Subsection 6.04.090 A.3., the Director will reconsider the deficiency determination or civil penalties, and, if requested in the petition, will grant an oral hearing and give 10 days notice of the time and place of the hearing. The Director may continue the hearing from time to time as may be necessary.
- C. The Director may adjust the amount of the deficiency determination as a result of the hearing and, if an increase is determined, such increase will be payable immediately after the hearing.
- D. The Director's order or decision becomes final 10 days after service upon the petitioner unless an appeal is filed with the Business License Appeals Board or Hearings Officer, if applicable, within 10 days after service.
- E. No petition for redetermination or other appeal will be accepted and no petition or appeal is effective for any purpose unless the Operator has first complied with the payment provisions and has paid in full the amount determined to be due in the deficiency determination or civil penalty that is being appealed.

#### **6.04.110 Security for Collection of Tax.**

(Amended by Ordinance Nos. 162647, 187339 and 188170, effective January 20, 2017.)

The Division, whenever deemed necessary to ensure compliance with this Chapter, may require any Operator to deposit security in the form of cash, bond or other security as the Division may determine. The amount of the security will be determined by the Division but will not be greater than twice the Operator's largest quarterly liability, determined in

such manner as the Division deems proper. No interest will accrue on any security required by the Division.

**6.04.120 Credits or Refunds.**

(Amended by Ordinance Nos. 187339 and 188170, effective January 20, 2017.)

- A. Credits by City to Operator. Whenever the amount of any tax, penalty, or interest has been paid in error to the Division under this Chapter, it may be credited to the Operator's account, provided a verified claim in writing, stating the specific reason upon which the claim is founded, is filed with the Division within 3 years from the date of payment. If the claim is approved by the Division, the excess amount collected or paid may be credited against any current or future amounts due and payable from the Operator. If there is no future liability, the Division may issue a refund.
- B. Refunds by City to Transient. Whenever the tax required by this Chapter has been collected by the Operator, and paid by the Operator to the Division, and it is later determined that the tax was erroneously collected by the Operator, it may be refunded by the Division to the Transient or the party who paid the tax if different from Transient, provided a verified claim in writing, stating the specific reason on which the claim is founded, is filed with the Division within 3 years from the date of payment. Prior to any refund, the Division will audit the Operator's records to determine that the tax was collected and paid to the City.
- C. Refunds by Operator to Transient. Whenever the tax required by this Chapter has been collected by the Operator and it is later determined that the tax was collected in error, the Operator will refund to the Transient the tax previously collected. The Operator will account for such collection and refund to the Division. If the Operator has remitted the tax prior to refund to the Transient, the Operator may request a credit for the refunded tax when the next report is filed with the City.

**6.04.130 Administration and Recordkeeping.**

(Amended by Ordinance Nos. 187339, 188170 and 188501, effective July 5, 2017.)

- A. Records required from Operator. Operators must keep appropriate records, including but not limited to registration forms or logs, accounting and bank records, supporting documentation for all deductions taken and any other documentation necessary to support the tax report filed or required to be filed. All records must be retained by the operator for a period of 5 years and 6 months after the filing of the tax return, amended return or payment of the tax, whichever is later.
- B. Examination of records; investigations. The Division, or any person authorized in writing by it, may examine during normal business hours the books, papers and accounting records relating to tax returns filed by any Operator, after notification to the Operator liable for collecting and remitting the tax, and may investigate the business of the Operator in order to verify the accuracy of any return made, or if no return is made or, to determine the amount required to be paid.

- C.** Subpoenas. For purposes of determining compliance with this Chapter, the Director may issue subpoenas to any Operator or Person for the production of all information, documents, reports, records, accounts, papers, and other data and documentary evidence, in whatever format or however stored, necessary to ensure compliance with this Chapter.
- 1.** It is unlawful for any Operator or Person so subpoenaed to neglect or refuse to attend at the proper time and place and to bring the records mentioned in the subpoena, or, having done so, to refuse or neglect to answer such questions as may be applicable to the matter at issue or to allow records to be examined, unless the Operator or Person has first sought and obtained an order quashing the subpoena from a court of competent jurisdiction, in the same manner as provided for in a civil case. Failure to seek and obtain such an order waives any objections or defenses the person may have against compliance with the subpoena, whether or not the person made any specific objections or raised that specific defense in seeking the order to quash.
  - 2.** If an Operator or Person subpoenaed as provided fails to appear or produce any records as required, or whenever any Operator or Person so summoned refuses to answer any question pertinent to the subject under inquiry, the City Attorney may apply to any court of competent jurisdiction for an order to the Operator or Person to attend and testify, or otherwise comply with the subpoena.
  - 3.** The City Attorney's application to the court may seek an order requiring the Operator or Person against whom the subpoena is directed to comply with the subpoena within 3 days after service of the order, or within such further time as the court may grant, or to justify the failure within that time.
- D.** Should the City prevail in any legal proceedings in any state or federal court to collect the taxes, penalties and interest assessed in accordance with this Chapter, or to enforce a subpoena, the City shall be entitled to its reasonable costs and attorneys' fees.
- E.** At any time within 5 years after any tax or any amount of tax required to be collected becomes due and payable or at any time within 5 years after any determination becomes final, in the case where no tax returns have been filed, the Division may bring an action in the courts of this State, or any other state, or of the United States in the name of the City to collect the amount tax due, together with all penalties and interest amounts assessed under this Code.
- F.** Confidential financial information. Except as otherwise required by law, it is unlawful for the Division, or any elected official, employee or agent, to divulge, release, or make known in any manner any financial information submitted or disclosed to the Division under the terms of Chapter 6.04. Nothing in this subsection prohibits:

1. The disclosure to, or the examination of, financial records by City officials, employees or agents for the purpose of administering or enforcing the terms of this Chapter, or collecting taxes imposed under the terms of this Chapter, or collecting City permit fees or business license taxes; or
2. The disclosure to the Operator or an authorized representative of financial information, including amounts of transient lodgings taxes, penalties, or interest, after filing of a written request and approval of the request by the Director; or
3. The disclosure of the names and addresses of any persons to whom Certificates of Authority have been issued; or
4. The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular Operator's return; or
5. The disclosure of financial information to the City Attorney or other legal representatives of the City, to the extent the Division deems disclosure or access necessary for the performance of the duties of advising or representing the Division.
6. The disclosure of financial information or unpaid tax balances, including penalty and interest assessments, to an outside collection agency on contract with the City to provide collection services.

**6.04.140 Business License Appeals Board; Hearings Officer; Appeal; Rules.**

(Replaced by Ordinance No. 184772; amended by Ordinance Nos. 187339 and 188170, effective January 20, 2017.)

- A. Except as provided herein, the Business License Appeals Board has authority to hear and determine appeals of orders or decisions of the Division or Director made upon petitions for redetermination. The Board may affirm, modify, or reverse such orders or decisions or dismiss the appeals and prescribe such forms, rules, and regulations relating to appeals as it may deem necessary. In the review of the Division or Director's decision or order, the Board may take such evidence and make such investigation as it may deem necessary. It will give notice of its determinations in the manner prescribed for service of a notice of the Division or Director's decision and will file a copy of each such determination with the Division. Such determination will become final after 10 days and any increase to the determination becomes due and payable once final, subject to interest and penalties, and enforceable by the Division as an order or decision of the Division or Director.
- B. For an amount in controversy greater than \$10,000 and less than \$50,000, an appellant may request a hearing by an appointed Hearings Officer instead of a hearing by the Business License Appeals Board.

- C. An appeal involving an amount in controversy greater than \$50,000 will be heard by a Hearings Officer instead of a hearing by the Business License Appeals Board. The Hearings Officer will be appointed by the City Attorney, will be a member of the Oregon State Bar and will not be a City employee.
- D. In appeal hearings held before a Hearings Officer, the appellant and the City's representative will each have the right to appear in person and be represented by legal counsel, to receive notice, to respond to and present evidence, to call and cross-examine witnesses under oath and to present argument on all issues involved. Subject to the provisions herein, the City Attorney may promulgate supplementary rules and procedures for the conduct of the hearing, the forms of notice and proceedings, and the preparation and submission of the record.
- E. The record in a proceeding before the Hearings Officer will include:
1. All pleadings, motions, and intermediate rulings;
  2. Evidence received or considered;
  3. Stipulations;
  4. A statement of matters officially noticed;
  5. Questions and offers of proof, objections, and rulings thereon;
  6. Proposed findings and exceptions; and
  7. Any proposed, intermediate, or final order prepared by the Hearings Officer.
- F. The Hearings Officer has the power to compel attendance of witnesses by deposition or at hearing and the production of documents by subpoena to any party upon showing of general relevance and subpoena in accordance with civil law.
- G. The formal rules of evidence do not apply and any relevant evidence that is the sort of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of serious business affairs is admissible. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Hearsay evidence may be considered by the Hearings Officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The Hearings Officer will give effect to the rules of privilege recognized by law.
- H. The Hearings Officer may take notice of judicially recognizable facts, and the Hearings Officer may take official notice of general, technical, or scientific facts within the specialized knowledge of City employees.
- I. A verbatim, written, mechanical, or electronic record will be made on all motions, rulings, and testimony if requested by any party. The record will be transcribed for

the purposes of court review. If the City prevails on such review, the reasonable costs of preparing the transcript will be allowed as a part of the City's costs in such action.

- J. The Hearings Officer is authorized to rule upon issues of law or fact and to determine the amount of the tax, penalty or interest due in accordance with the Transient Lodgings Tax Law. The Hearings Office does not have any jurisdiction to waive, mitigate or suspend the collection of any tax, penalty or interest assessment found to be duly imposed.
- K. The decision of the Hearings Officer will be issued in writing in a final order. The final order becomes final on the date specified in the order, which date will be within 30 days after the conclusion of the hearing. The decision is the final administrative remedy of the appellant. Any amounts due are payable to the City of Portland within 10 days of the order becoming final. The Hearings Officer will notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

**6.04.150 Appeal to Business License Appeals Board, Hearings Officer.**

(Replaced by Ordinance No. 184772; amended by Ordinance Nos. 187339 and 188170, effective January 20, 2017.) Any Operator or Transient aggrieved by a decision of the Director made pursuant to Section 6.04.100 may appeal to the Business License Appeals Board or Hearings Officer as allowed in Section 6.04.140 by filing a notice of appeal with the Director within 10 days of the service of the notice of a Director's decision. Any hearing will be scheduled by the Business License Appeals Board or Hearings Officer in accordance with rules pertaining to such appeals.

**6.04.155 Appeal of Penalty or Interest Assessments.**

(Added by Ordinance No. 188170, effective January 20, 2017.) Appeals of penalty and/or interest assessments are not subject to the appeals process or timeline outlined in Section 6.04.140 or 6.04.150 above. The Operator must follow the "Redetermination" procedures under Section 6.04.100. The decision of the Director regarding penalty and interest assessments is final.

**6.04.160 Appeals to City Council.**

(Repealed by Ordinance No. 184772, effective August 26, 2011.)

**6.04.165 Presumptive Tax for Failure to Register or File Returns.**

(Added by Ordinance No. 188170, effective January 20, 2017.)

- A. The Director may impose a presumptive tax upon any Person failing or refusing to register as an Operator or file tax returns as required under this Chapter.
- B. In calculating the presumptive tax amount when imposed under this Section, the Division will determine:



1. The number of rooms that the Operator controlled for each day that it was not registered; and
  2. The room rental rate, based upon the best available information, including comparable operations by a similarly situated Operator; or
  3. Use any other reasonable method available to the Division to impose a presumptive tax, including but not limited to tax returns filed by similarly situated Operators.
- C. Any presumptive tax issued under this section will include penalty and interest assessments based on when the registration or tax returns were originally due, following the rules established within this Chapter.
- D. Presumptive taxes are not intended to approximate actual taxes that may be due and nothing prohibits the Division from assessing excessive tax amounts due based on reasonable assumptions and calculation methods.

**6.04.170 Civil Penalties for Violations of this Chapter.**

(Amended by Ordinance Nos. 186985, 187339 and 188170, effective January 20, 2017.) It is unlawful for any Operator or other Person so required to fail or refuse to register or to fail or refuse to file any return required, or to fail or refuse to file a supplemental return or any other data required by the Division, or to render a false or fraudulent return, or to fail to perform any of the duties required in Chapter 6.04. No Person required to make, render, sign, or verify any report will make any false or fraudulent report with intent to defeat or evade the determination of any amount due required by this Chapter. In addition to any presumptive taxes assessed under Section 6.04.165, the Director may impose a civil penalty of up to \$500 for each violation of this Chapter. Violations may be assessed as frequently as necessary to achieve compliance with this Chapter, up to and including daily. A violation includes, but is not limited to:

- A. Failure to file any required Transient Lodgings Tax payment and/or report, including any penalties and interest, within 60 days of the due date;
- B. Filing a false or fraudulent report;
- C. Failure to register a Hotel or Short-Term Rental, or failure to register as an Operator with the Division as described in Section 6.04.060;
- D. Failure to maintain a separate account for the transient lodgings tax collected when required by the Division;
- E. Failure to provide any data or other information requested by the Division, including but not limited to, the physical address of a transient lodging occupancy location within Portland and the related contact information;
- F. Failure by a Host or failure by any Operator to prominently display the Type A Permit Number, Type B Conditional Use case file number or Revenue Division

issued advertising number in advertising or other listing services, or failure by the Host to post the number in the Short-Term Rental unit; and

- G.** Failure by an Operator to prominently display the Accessory Short-Term Rental permit number, case file number or other number issued by the Division in all advertisements and/or in the Short-Term Rental.
- H.** Failure by an Operator to maintain records required in Subsection 6.04.130 A.

**EXHIBIT B**

## Data Sharing Agreement Minimum Data Requirements

- i. The first and last name, or business name, of the person listing the property ("Host") or the property owner or resident if different from the person listing the property.
- ii. The Host, resident or property owner's mailing address (if different from the listing address).
- iii. The Host, resident or property owner's phone number and email address.
- iv. The address of the short-term rental property.
- v. The BDS application permit type.
- vi. The number of rooms for rent in the short-term rental property.
- vii. A description of the listing written by the Host.
- viii. The rental listing number or unique identification number for the registration submission generated by Airbnb.
- ix. An attestation in a form required by Revenue that by clicking "submit," the Host has read and understands and agrees to abide by the City's applicable requirements and agrees to allow Airbnb to submit the above registration information on the Host's behalf to the City. Such attestation agreement shall be without restriction and the data shared shall be public information.
- x. The Host's existing permit numbers, if any. Existing permit numbers include the ASTR permit number, and may include the Host's business license number or the Host's Transient Lodging Tax registration number, if provided by the Host.
- xi. Booking and transactional data by listing location and Host. Such data shall include the date(s) the listing is booked and occupied, and the date and amount of the transaction booking the location/listing.
- xii. Any other such information or conditions as the Director of the Revenue Division shall require.