



Legislation Details (With Text)

File #: 230364 **Version:** 1 **Name:**
Type: Ordinance **Status:** Passed
File created: 4/20/2023 **In control:** Council
On agenda: 5/11/2023 **Final action:** 5/11/2023
Title: Sponsor: Mayor Quinton Lucas

Amending Chapter 68 of the Code of Ordinances entitled "Taxation" by enacting a new Article XI, Sections 68-585 through 68-606 entitled "Transient Boarding and Accommodation Tax" to provide for uniform taxation of short-term rentals not otherwise subject to the requirements of Sec. 68-551 of the Code of Ordinances; and establishing an effective date.

Sponsors: Quinton Lucas

Indexes:

Code sections:

Attachments: 1. Docket Memo 230364, 2. Authenticated Ordinance 230364

| Date | Ver. | Action By | Action | Result |
|-----------|------|---|-----------------|--------|
| 5/11/2023 | 1 | Council | Passed | Pass |
| 5/10/2023 | 1 | Finance, Governance and Public Safety Committee | Adv and Do Pass | Pass |
| 4/20/2023 | 1 | Council | referred | |

ORDINANCE NO. 230364

Sponsor: Mayor Quinton Lucas

Amending Chapter 68 of the Code of Ordinances entitled "Taxation" by enacting a new Article XI, Sections 68-585 through 68-606 entitled "Transient Boarding and Accommodation Tax" to provide for uniform taxation of short-term rentals not otherwise subject to the requirements of Sec. 68-551 of the Code of Ordinances; and establishing an effective date.

WHEREAS, pursuant to the Missouri Constitution, Missouri Charter Cities are authorized to impose any tax which the legislature of Missouri could grant, so long as the exercise of such authority does not otherwise conflict with the Missouri Constitution, state statutes, or the City's Charter and the tax is approved by a majority of the qualified voters; and

WHEREAS, the City presently imposes a convention and tourism tax of seven and one-half percent (7.5%) on the sale or charges of certain sleeping rooms paid by the transient guests of hotels, motels, and tourist courts situated within the City and doing business within the City pursuant to Section 68-551, Code of Ordinances; and

WHEREAS, the question of whether to impose a 7.5% tax on the sales or charges of all other sleeping rooms not otherwise subject to the convention and tourism tax was approved by the qualified voters of Kansas City on April 4, 2023; NOW, THEREFORE

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That with approval of the qualified voters of the City, Chapter 68, Article IX of the Code of Ordinances shall be amended by enacting Sections 68-585 through 68-606 entitled “Transient Boarding and Accommodation Tax” to read as follows:

Sec. 68-585. Definitions.

“Short-Term Rental Unit,” any dwelling unit, or portion of a dwelling unit, which contains eight or fewer rooms furnished for the accommodation or lodging of transient guests, and kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are sought for pay or compensation to such transient guests for a period of thirty (30) or fewer consecutive days. Sleeping accommodations consisting of one bedroom or more, that rent for less than twenty dollars per day or less than eighty-five dollars per week and shelters for the homeless operated by not-for-profit organizations are not considered "short-term rental units" for the purposes of this section;

“Operator” is a person or entity, if applicable, offering a Short-Term Rental Unit, whether as the owner, lessee, or otherwise.

“Booking Service Provider” a person or entity that facilitates the booking of a Short-Term Rental Unit. “Facilitate” includes, but is not limited to, the act of allowing an Operator to offer to list or advertise, typically for a charge or fee, the Short-Term Rental Unit on an Internet website, in a print publication, or through another forum provided or maintained by the Booking Service Provider.

“Transient Guest” is any person who occupies or is entitled to occupancy of any rooms, lodgings, or accommodations in a Short-Term Rental Unit for a period of thirty (30) or fewer consecutive days.

“Occupancy” refers to the use or possession, or the right to use or possess, any room, lodging, or accommodation in any Short-Term Rental Unit.

Sec. 68-586. Transient Boarding and Accommodation Tax.

Pursuant to the authority granted by and subject to the provisions of Article VI, Section 19(a) of the Missouri Constitution, a Transient Boarding and Accommodation Tax is imposed as follows:

(a) A tax of seven and one-half percent (7.5%) shall be imposed on all sales or charges of all sleeping rooms paid by the transient guests of all Short-Term Rental Units not otherwise subject to the Convention and Tourism tax authorized by Section 68-551 of the Code of Ordinances.

(b) This tax shall be known as the Transient Boarding and Accommodation tax, and shall be collected and deposited by the city treasurer as described in Section 68-588.

Sec. 68-587. Effective date.

All Operators of Short-Term Rental Units shall be subject to the Transient Boarding and Accommodation Tax beginning on August 1, 2023 and shall remit such tax in accordance with the requirements stated in Sections 68-585 through 68-607.

Sec. 68-588. Operation and maintenance of funds.

The revenues received from the tax imposed by this article shall be used solely for convention and tourism purposes.

Sec. 68-589. Tax in lieu of gross receipts tax.

No gross receipts tax imposed solely on Short-Term Rental Units shall be levied or collected by the City so long as the Transient Boarding and Accommodation Tax imposed under this article is in effect.

Sec. 68-590. Tax clearance required for issuance and renewal of registration.

All Operators shall present a tax clearance letter, issued by the City, as evidence that such Operator has paid all previously outstanding balances of the Transient Boarding and Accommodation Tax, upon registration and annual renewal of registration of a Short-Term Rental Unit as described Chapter 56 of the Code of Ordinances.

Sec. 68-591. Violations.

(a) Any Operator or Booking Service Provider required to collect, account for and remit the Transient Boarding and Accommodation Tax who willfully fails to collect such tax or truthfully account for and remit such tax, or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and remitted.

(b) In case of failure to file any return required under this article on or before the date prescribed therefor (determined with regard to any extension of time for making a return), unless it is shown that such failure is due to reasonable cause and not the result of willful neglect, evasion or fraudulent intent, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is not for more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

(c) In case of failure to pay any tax required under this article on or before the date prescribed therefor (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not the result of willful neglect, evasion or fraudulent intent, there shall be added to the tax an amount equal to five percent of the deficiency.

(d) In the event that a Booking Service Provider has contracted with the City for the purposes of collection and remittance of the Transient Boarding and Accommodation Tax, an Operator shall not be subject to the penalties described in subsection (c) for the Booking Service Provider's failure to timely remit such tax to the City.

Sec. 68-592. Collection of tax from patrons; allowance to collector

(a) Any Operator or Booking Service Provider responsible for the collection and remittance of the Transient Boarding and Accommodation Tax shall collect the tax from Transient Guests, and each such Transient Guest shall pay the amount of the tax, provided that a Transient Guest pay an amount no more than seven and one-half percent (7.5%) of the total charges for the services provided.

(b) The city shall allow the Operator or Booking Service Provider required to collect and remit the tax

to deduct and retain an amount equal to two percent of the tax collected for the timely remittance of the tax.

Sec. 68-593. Statement of tax; responsibility for collection.

(a) It shall be a violation of this article for any Operator or Booking Service Provider to advertise, hold out, or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this article, will be assumed or absorbed by the Operator or Booking Service Provider.

(b) The tax imposed by this article must be separately stated on any bill, invoice or other document that is used by the Operator or Booking Service Provider to collect for items or services from Transient Guests, and must be added to the total taxable amount.

(c) Every Operator receiving payment for sales or services subject to this article shall be responsible for the collection of the Transient Boarding and Accommodation Tax, and their inability to collect any or all of the applicable amount does not relieve them of the obligation to pay the tax to the city.

(d) Notwithstanding the requirements in subsection (c), in the event that a Booking Service Provider is responsible for the collection and remittance of the Transient Boarding and Accommodation Tax on behalf of an Operator, that Operator shall not be responsible for payment of the tax collected by the Booking Service Provider.

(e) Any Operator or Booking Service Provider violating any of the provisions of this section shall be guilty of an ordinance violation.

Sec. 68-594. Refusal of purchaser to pay tax.

It shall be the duty of every Transient Guest making any purchase or receiving any service upon which a tax is imposed by this article to pay the amount of such tax to the Operator or applicable Booking Service Provider, provided that a Transient Guest pay no more than seven and one-half percent (7.5%) of the total charges for services rendered. Any person who shall willfully and intentionally refuse to pay such tax shall be guilty of an ordinance violation.

Sec. 68-595. Exemptions.

Persons on United States government official business are exempt from payment of the Transient Boarding and Accommodation tax.

Sec. 68-596. Authority to require bond.

When, in the judgment of the commissioner of revenue, it is necessary, in order to secure the collection of any tax, penalties or interest due, or to become due, under this article, the commissioner may require any person subject to such tax to file a bond with the commissioner in such form and amount as prescribed.

Sec. 68-597. Filing of returns; remittance schedule.

(a) Every Operator or Booking Service Provider responsible for the collection and remittance of the Transient Boarding and Accommodation tax shall make a return to the commissioner showing taxable sales and the amount of tax levied for a specified period of time and shall remit to the commissioner, with the return, the taxes levied. The return shall be in a form as prescribed by the commissioner, and must include the Operator or

Booking Service Provider's federal tax identification number.

(b) The Transient Boarding and Accommodation Tax shall be paid to the commissioner of revenue quarterly, due and payable on the following dates, for the preceding periods as listed, based on the total amount of sales or charges of all sleeping rooms paid by the transient guests of all Short-Term Rental Units. The Operator shall make true reports on the dates listed below to the commissioner or revenue, in a form prescribed by the commissioner, giving such information that may be necessary to determine an accurate taxable amount within the preceding three-month period. The Operator shall be responsible for timely remittance of all tax not otherwise collected and remitted by the Booking Service Provider.

| Remittance Due Date for Transient Boarding and Accommodation Tax | Period Covered |
|--|-------------------------------|
| April 30 | January 1 through March 31 |
| July 31 | April 1 through June 30 |
| October 31 | July 1 through September 30 |
| January 31 | October 1 through December 31 |

Sec. 68-598. Extension of time for payment.

(a) The commissioner of revenue may, before any delinquency and for good cause shown, extend the time of payment of the tax imposed by this article for a period not to exceed 60 days.

(b) After delinquency, extensions of time to pay the Transient Boarding and Accommodation tax shall not be granted except for exceptional mitigating circumstances for the cause of the delinquency and demonstrated proof of financial ability to repay the delinquency. If the remitter of the tax meets such criteria, the commissioner, in their discretion, may permit the Operator to enter into a payment agreement, in a form prescribed by the commissioner, to pay the tax, along with interest and penalties, in installments for a period not to exceed six months. Failure to make any installment payment due under the agreement shall cause the entire balance due to become payable immediately, and subject to recovery and collection as provided in this article.

Sec. 68-599. Powers and duties of commissioner.

The commissioner is hereby charged with the administration and enforcement of the provisions of this article, and is hereby authorized and empowered to:

(a) *Collect and deposit taxes.* To collect and receive the tax, interest and penalties imposed by this article and pay over the proceeds thereof to the city treasurer.

(b) *Keep accounts.* To keep an accurate account of all such payments received and refunds issued.

(c) *Adopt rules and regulations.* To adopt, promulgate, amend and enforce rules and regulations relating to any manner or thing pertaining to the administration and enforcement of the provisions of this article. All such rules and regulations must be approved by the city council before they shall become effective.

(d) *Adopt and prepare applications, returns and forms.* To adopt, prepare and make available to all taxpayers the applications, returns and forms necessary to comply with this article.

(e) *Examine records.* Through agents or employees authorized by the commissioner to examine the books, papers, state sales tax returns and records of any person in order to verify the accuracy of any return made, or, if no return is made, to ascertain the tax imposed by this article.

(f) *Examine under oath.* To examine any person, under oath or affirmation, concerning any part of this article, and to this end may compel the production of books, papers, tax returns and records and the attendance of all persons before the commissioner, whether as parties or witnesses, who the commissioner believes to have knowledge of such taxes.

(g) *Waive penalties and enter into voluntary disclosure agreements.* The commissioner, in their sole discretion, may waive all or any portion of penalties imposed under this article as a result of nonpayment of tax where the taxpayer shows the nonpayment was due to reasonable cause. This authority may be exercised at the discretion of the commissioner under special circumstances. The commissioner may also waive penalties under this article by entering into voluntary disclosure agreements with taxpayers under criteria established by the commissioner. This authority shall in no way be construed so as to authorize the waiver of interest by the commissioner.

Sec. 68-600. Refunds.

Should it appear that any person has paid during any one period more than the amount of the tax to which the city is entitled under the provisions of this article, a refund or credit of the amount so overpaid shall be made, provided a proper claim for refund or credit of such overpayment of tax is filed by the person within three years from the date when the return for the taxable period was due as described in Section 68-597.

Sec. 68-601. Assessment of unpaid tax.

(a) If the commissioner determines that any Operator or Booking Service Provider responsible for the collection and remittance of the Transient Boarding and Accommodation Tax has a liability for which the Operator or Booking Service Provider has filed no return or has filed an incorrect return, thereby failing to pay the full amount due, the commissioner shall issue an assessment showing the amount of tax due, together with any applicable penalty and interest as described in Section 68-591. The commissioner may issue assessments manually or through the use of an automated system or systems. Such assessment shall be served upon the taxpayer by mail or electronic means reasonably calculated to provide notice to the taxpayer.

(b) If the Operator or Booking Service Provider responsible for the collection and remittance of the tax does not pay the assessment within 30 days of the date of the notice of assessment, or within such time file with the commissioner a written notice of appeal to the director, such assessment may be recovered under the provisions of this article.

(c) Except in the case of a fraudulent return, or neglect or refusal to make a return, every notice of additional amount proposed to be assessed under this section shall be provided in writing to the Operator or Booking Service Provider within three years after the return was filed or was required to be filed.

Sec. 68-602. Confidentiality of information.

(a) It is unlawful to publish or disseminate any information that appears on forms, returns, or that is obtained as a result of any return investigation, hearing or verification required or authorized by this article; and such information shall be confidential, except for official tax administration purposes. The city may enter into

formal tax information exchange agreements with the Internal Revenue Service and revenue agencies at the state level to enhance the collection of tax and enforcement of the provisions of this article.

(b) Any person otherwise willfully divulging such information shall, upon conviction thereof, be deemed guilty of an ordinance violation. In addition to such penalties, any officer or employee of the city who willfully violates the provisions of this section relative to the disclosure of confidential information shall be immediately dismissed from the service of the city.

Sec. 68-603. Audits.

(a) The commissioner of revenue and the director of finance, or any deputy or agent thereof, or certified public accountant employed thereby, shall have the right at all reasonable times during regular business hours to audit or examine the books and records of a person who has applied for a registration number under Chapter 56 of the Code of Ordinances or a person who possesses a current registration number. The purpose of an audit is to determine the truthfulness and accuracy of any statements made by the applicant or registrant on an application or return and to verify amounts remitted. Reported sales receipts will be compared to figures obtained by business books and records, by federal and state income tax returns, by state sales tax returns, or by other records, invoices, bills or receipts which show sales subject to the tax and sales which are exempt.

(b) No registration number provided pursuant to Chapter 56 of the Code of Ordinances shall be issued to any applicant so long as the applicant refuses to permit audit or examination.

Sec. 68-604. Appeals.

Final decisions of the commissioner under this article may be appealed within 30 days after receiving notice of such decision by filing with the director of finance a written notice of appeal setting forth the grounds therefor. An appeal to the director of finance stays all enforcement of the determination from which the appeal is being taken. Final decisions of the director of finance may be appealed as provided in RSMo Chapter 536.

Sec. 68-605. Liens for collection of tax.

(a) In any case in which any assessment of tax, interest, additions to tax or penalty imposed under this article has been made and has become final, the commissioner may file for record in the recorder's office of the county in which the Operator owing such tax, interest, additions to tax or penalty resides or has his place of business a notice of lien specifying the amount of the tax, additions to tax, interest or penalty due and the name of the person liable for the tax. From the time of filing, any such notice shall, for purpose of collecting the tax, interest, additions to tax or penalty, have the force and effect of the lien of a judgment in favor of the city against the real estate or any interest in real estate owned by the Operator named in such notice of lien, for the amount specified in such notice. The commissioner shall, within a reasonable time after filing the lien, notify the taxpayer by first class mail, postage prepaid.

(b) The lien shall be continuing and shall attach to real property or interest in real property acquired in any manner by the Operator after the filing of the notice of lien. Unless sooner released or discharged, the lien shall expire ten years after the notice of lien was filed unless, within such ten-year period, the notice of lien has been refiled by the commissioner with the recorder. Unless sooner released or discharged, a timely refiled lien shall be treated as if filed on the date of filing of the original lien and shall expire ten years from the refiled. A lien may not be refiled more than one time.

(c) If any liens have been erroneously or improvidently filed, the Operator or any other person affected

by the lien may notify the commissioner. The Operator or other affected person shall provide the reasons why the filing of the lien is erroneous or improvident as to such person, including the affected person's name or other identification similar to the Operator's, and a list of creditors with current addresses who are affected. Upon receipt of this list, reasons and verification of the erroneous or improvident filing, the commissioner shall release the lien as to the Operator or the affected person, as necessary, and notify all creditors, stating that the liens filed were erroneously or improvidently attached. The commissioner shall take whatever steps are necessary to ensure that the lien is expunged.

(d) The lien imposed under subsection (a) of this section may be wholly or partly released by filing for record in the office of the county recorder a release thereof executed by the commissioner upon payment of the tax, interest, additions to tax and penalties or upon receipt of security sufficient to secure payment thereof, or by final judgment holding such lien to have been erroneously or improvidently imposed.

(e) The commissioner may release any part of the property subject to the lien by filing with the county recorder a copy of the original lien document and an affidavit containing a legal description of the property and stating that the property is to be released from the lien. The release of any specific property shall not affect in any manner other property subject to lien.

(f) The commissioner is authorized to collect an additional penalty from each taxpayer equal to the cost of filing a notice of lien or release with respect to such taxpayer.

(g) The commissioner shall establish and maintain records for all liens filed under this section. He shall also maintain records of all certificates or release of lien. Such records established and maintained by the city shall not be the official record and are not conclusive evidence of any liability of any taxpayer.

(h) No lien described subsection (a) shall be filed against an Operator whenever the commissioner has found that the unpaid tax is the result of error or neglect on the part of the Booking Service Provider responsible for collection and remittance of the tax on behalf of the Operator.

Sec. 68-606. Sale of business; rights of secured creditors.

(a) If any Operator or Booking Service Provider required to remit a tax levied under this article or if that person's successors shall sell their business or stock of goods or shall quit the business, such person shall make a final return under oath within 15 days after the date of selling or quitting business.

(b) Except as provided in this section, all successors, if any, shall be required to withhold sufficient amounts of the purchase money to cover any such taxes, interest or penalties due and unpaid until such time as the former owner or predecessor, whether immediate or not, shall provide a receipt from the city showing that the taxes have been paid, or a certificate stating that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as provided in this section, the purchaser shall be personally liable for the payment of the taxes, interest and penalties accrued and unpaid on account of the operation of the business by the former owner and person.

(c) The city shall, notwithstanding the provisions of RSMo § 32.057, upon written request, furnish within 15 business days from the receipt of such request by certified mail, return receipt requested, to any owner, successor, secured creditor or purchaser, or in the case of a proposed purchaser if joined in writing by the owner, a statement showing the amount of taxes, interest or penalty due and owing or a certificate showing that no taxes, interest or penalties are due under this article, including the date of the last payment for such taxes, interest or penalties as shown by the records of the city. The person obtaining this certificate may rely

upon such for a period of 120 days.

(d) A secured creditor who shall enforce a lien against a business or stock of goods of a business subject to this article shall be entitled to obtain from the city a statement of tax due and the status of tax payments. If the city does not respond within 15 business days from the date of receipt of such request by the secured creditor seeking to enforce its lien, it shall be conclusively presumed that all such taxes have been paid as to the secured creditor or any successor of the secured creditor, whether such successor is immediate or not. Nothing in this section shall eliminate the liability of the owner of the business owing tax from the liability to pay such tax. Any purchaser who acquires the business or stock of goods as a result of the enforcement action by a creditor, including the creditor, shall be exempt from the liability set forth in subsection (b) of this section, whether such purchaser is immediate or subsequent thereto.

(e) Any such creditor who shall enforce a lien against the business or stock of goods subject to the provisions of this section shall be entitled to be paid the principal sums due, and all accrued interest thereto under the laws of the state or the United States of America. Any balance then remaining, up to the amount of the tax, interest and penalties then due, shall be remitted to the city as provided by this section. Nothing in this section shall affect the priority of any lien filed by the city against the former owner or predecessor.

(f) Mailing of notices or requests, by first class mail, postage prepaid, certified with return receipt requested, shall be prima facie evidence that the party to whom it is addressed received the correspondence, notice or request.

Sec. 68-607. Uncollectible assessments.

Upon the advice of the city attorney, the commissioner of revenue shall abate any Transient Boarding and Accommodation Tax assessment that the city attorney determines is legally unenforceable because the time to file suit to recover the tax has expired under the statute of limitations.

Approved as to form:

Samuel E. Miller
Assistant City Attorney