

## Chapter 105

### TAXATION

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[HISTORY: Adopted by the Board of Trustees of the Village of Jemez Springs as indicated in article histories. Amendments noted where applicable.]

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#### ARTICLE I Lodger's Tax

[Adopted by Ord. No. 111 (Ch. 10, Art. 2, of the 1996 Village Code)]

##### § 105-1. Citation.

This article shall be known as and cited as the "Lodger's Tax Ordinance."

##### § 105-2. Purpose. [Amended 12-11-1996 by Ord. No. 119]

The purpose of this article is to impose a tax which will be borne by persons using commercial lodging accommodations which tax will provide revenues for the purpose of advertising, publicizing, and promoting tourist-related attractions, facilities and events, and acquiring, establishing and operating tourist-related facilities, attractions or transportation systems, as authorized in § 105-17 of this article.

**§ 105-3. Definitions. [Amended 12-11-1996 by Ord. No. 119]**

As used in this article, the following terms shall have the meanings indicated:

**BOARD** — The advisory board established herein to make recommendations to the governing body, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body.

**GROSS TAXABLE RENT** — The total amount of rent paid for lodging, not including the state gross receipts tax or local sales tax.

**LODGING** — The transaction of furnishing rooms or other accommodations by a vendor to a vendee who, for a rent, uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at a taxable premises.

**LODGINGS** — The rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

**OCCUPANCY TAX** — The tax on lodging authorized by the Lodger's Tax Act.<sup>1</sup>

**PERSON** — A corporation, firm, other body corporate, partnership, association or individual, including an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity, but does not include the United States of America, the state, any corporation, department, instrumentality or agency of the federal government or the state government, or any political subdivision of the state.

**RENT** — The consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodger's Tax Act.

**TAXABLE PREMISES** — A hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises for lodging.

**TOURIST** — A person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.

**TOURIST-RELATED EVENTS** — Events that are planned for, promoted to and attended by tourists.

**TOURIST-RELATED FACILITIES AND ATTRACTIONS** — Facilities and attractions that are intended to be used by or visited by tourists.

**TOURIST-RELATED TRANSPORTATION SYSTEMS** — Transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events.

**VENDEE** — A natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

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1. Editor's Note: See NMSA 1978, §§ 3-38-13 through 3-38-24.

VENDOR — A person or his agent furnishing lodgings in the exercise of the taxable service of lodging.<sup>2</sup>

VILLAGE CLERK/TREASURER — The Village Clerk/Treasurer of the Village.

**§ 105-4. Imposition of tax.**

There is hereby imposed an occupancy tax of 5% of gross taxable rent for lodging within the Village paid to vendors.

**§ 105-5. Licensing.**

- A. No vendor shall engage in the business of providing lodging in the Village who has not first obtained a license as provided in this section.
- B. Applicants for a vendor's license shall submit an application to the Village Clerk/Treasurer stating:
- (1) The name of the vendor, including identification of any person, as defined in this article, who owns or operates, or both owns and operates, a place of lodging and the name or trade names under which the vendor proposes to do business and the post office address thereof;
  - (2) A description of the facilities, including the number of rooms and the usual schedule of rates thereof;
  - (3) A description of other facilities provided by vendor or others to users of the lodgings, such as a restaurant, bar, cleaning, laundry, courtesy car, stenographer, tailor or others, and a statement identifying the license issued, to whom issued, the authority issuing, and the period for which issued. If applicable, also the identification number provided by the State Revenue Processing Division of the Taxation and Revenue Department.<sup>3</sup>
  - (4) The nature of the business practices of the vendor and to what extent, if any, his business is exempt from the lodger's tax.
  - (5) Other information reasonably necessary to effect a determination of eligibility for such license.
- C. The Village Clerk/Treasurer shall review applications for license within 10 days of receipt thereof, and grant the license in due course if the applicant is doing business subject to the lodger's tax.
- D. An applicant who is dissatisfied with the decision of the Village Clerk/Treasurer may appeal the decision to the governing body by written notice to the Village Clerk/Treasurer of such an appeal to be made within 15 days of the date of the decision of the Village Clerk/Treasurer on the application. The matter shall be referred to the

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2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

governing body for hearing at a regular or special meeting in the usual course of business. The decision of the governing body made thereof shall be expressed in writing and be communicated in the same manner as the decision of the Village Clerk/Treasurer is transmitted. The action of the governing body shall be deemed final.

- E. If the governing body finds for the applicant, the Village Clerk/Treasurer shall issue the appropriate license or other notice conforming to the decision made by the governing body.

#### **§ 105-6. Exemptions.**

The occupancy tax shall not apply:

- A. If a vendee:
- (1) Has been a permanent resident of the taxable premises for a period of at least 30 consecutive days; or
  - (2) Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least 30 consecutive days;
- B. If the rent paid by the vendee is less than \$2 per day;
- C. To lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;
- D. To lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions;
- E. To clinics, hospitals or other medical facilities;
- F. To privately owned and operated convalescent homes, or home for the aged, infirm, indigent or chronically ill;
- G. If the vendor does not offer at least three rooms within or attached to a taxable premises or at least three other premises for lodging, or a combination of these, within the taxing jurisdiction.<sup>4</sup>

#### **§ 105-7. Collection of tax and reporting procedures.**

- A. Every vendor providing lodgings shall collect the tax thereon on behalf of the Village and shall act as trustee thereof.
- B. The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.

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4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- C. Each vendor licensed under this article shall be liable to the Village for the tax provided herein on the rent paid for lodging at his respective place of business.
- D. Each vendor shall make a report by the 25th day of each month, on forms provided by the Village Clerk/Treasurer, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodger's tax to the Village and include sufficient information to enable the Village to audit the reports and shall be verified on oath by the vendor.

**§ 105-8. Records.**

Vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. Such records shall be maintained in the Josephine A. Shepard Municipal Building in the Village, and shall be open to the inspection of the Village during reasonable hours and shall be retained for three years.

**§ 105-9. Enforcement. [Added 12-11-1996 by Ord. No. 119]**

- A. An action to enforce the Lodgers' Tax Act may be brought by:
  - (1) The attorney general or the district attorney in the county of jurisdiction; or
  - (2) A vendor who is collecting the proceeds of an occupancy tax in the county of jurisdiction.
- B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Lodgers' Tax Act.
- C. The court shall award costs and reasonable attorneys' fees to the prevailing party in a court action to enforce the provisions of the Lodgers' Tax Act.

**§ 105-10. Failure to return; computation; civil penalty and notice; collection of delinquencies.**

- A. If a vendor makes a return as required by this article without paying the tax due, he shall be liable for the tax and a penalty equal to 10% thereof, but not less than \$100 penalty in addition to the tax, without notice from the Village with regard thereto. Any penalty so assessed shall be added to the principal amount of the tax due; the entire balance of the tax plus penalty shall then accrue interest at the rate of 1% per month. This represents an annual percentile rate of 12%. Interest shall be assessed 15 days after receipt of the return, and shall be computed from the date of receipt. The Village Clerk/Treasurer will give the delinquent vendor written notice of the estimated tax penalty and interest, mailed to the vendor's local address.
- B. If any vendor refuses or neglects to make a return and pay the tax as required by this article, the Village Clerk/Treasurer or designee shall make an estimate based upon an examination of the vendor's books and records, or upon any information in its possession, or that may come into its period with respect to which vendor has failed to make return,

and upon the basis of the estimated amount shall compute and assess the tax payable by the delinquent vendor, adding to the sum thus arrived at a penalty equal to 10% thereof, but not less than \$100. Any penalty so assessed shall be added to the principal amount of tax due; the entire balance of the tax plus penalty shall then accrue interest at the rate of 1% per month. This represents an annual percent rate of 12%. Interest shall be assessed 15 days after receipt of the return, and shall be computed from the date of receipt. The Village Clerk/Treasurer will give the delinquent vendor written notice of the estimated penalty and interest, mailed to the vendor's local address.

- C. If payments are not received within 15 days of the mailing of the notice, the Village Clerk/Treasurer may bring an action in law or equity in a court of law for the collection of any amounts due, including without limitation, penalties thereon, interest on the unpaid principal balance plus penalties at the rate of 1% per month. This represents an annual percent rate of 12%. The Village may attempt collection through an attorney or Village Attorney, and all other expenses incurred in connection therewith. Any sums so paid to an attorney or to the Village Attorney, and all costs and other expenses, shall accrue interest at the same rate, and in the same manner, as interest assessed on the tax plus penalty, and the vendor shall be liable to the Village therefor. Interest shall be computed from the date of payment to the attorney or Village Attorney.

**§ 105-11. Violations and penalties. [Amended 12-11-1996 by Ord. No. 119]**

Any person who violates the provisions of this article for a failure to pay the tax, to remit proceeds thereof to the Village or to properly account for any lodging and tax proceeds pertaining thereto, or for violating the confidentiality provisions of § 105-15 of this article, shall be guilty of a misdemeanor, punishable as set forth in § 1-22 of this Code.

**§ 105-12. Refunds and credits.**

If any person believes he has made payment of any lodger's tax in excess of that for which he was liable, he may claim a refund thereof by directing to the Village Clerk/Treasurer, no later than 90 days from the date payment was made, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The Village Clerk/Treasurer shall allow the claim in whole or in part or may deny it. Refunds of tax and interest erroneously paid and amounting to \$100 or more may be made only with the approval of the governing body.

**§ 105-13. Vendor audits.**

- A. The governing body shall conduct random audits to verify full payment of occupancy tax receipts.
- B. The governing body shall determine each year the number of vendors within the Village to audit.
- C. The audit(s) may be performed by the Village Clerk/Treasurer or by any other designee of the governing body. A copy of the audit(s) shall be filed annually with the Local Government Division of the Department of Finance and Administration.

**§ 105-14. Financial reporting. [Added 12-11-1996 by Ord. No. 119]**

- A. The governing body shall furnish to the advisory board that portion of any proposed budget, report or audit filed or received by the governing body pursuant to either NMSA 1978, § 6-6-1 et seq., or the Audit Act that relates to expenditure of occupancy tax funds within 10 days of the filing or receipt of such proposed budget, report or audit by the governing body.
- B. The governing body shall report to the local governing division of the Department of Finance and Administration on a quarterly basis any expenditure of occupancy tax funds pursuant to NMSA 1978, §§ 3-38-15 and 3-38-21, and shall furnish a copy of this report to the advisory board when it is filed with the Division.

**§ 105-15. Confidentiality of return and audit.**

It is unlawful for any employee of the Village to reveal to any individual other than another employee of the Village any information contained in the return or audit of any taxpayer, including vendors subject to the Lodger's Tax Act, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the Village is a party, and in which information sought is material to the inquiry; to the taxpayer himself or to his authorized representative; and in such a manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer.

**§ 105-16. Administration of monies collected. [Amended 12-11-1996 by Ord. No. 119]**

- A. The governing body shall administer the lodgers' tax monies collected.
- B. Appointment of members. The Mayor shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the municipality, two members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists and one member who is a resident of the municipality and represents the general public. The board shall advise the governing body on expenditure of funds authorized in this section for advertising, publicizing and promoting tourist attractions and facilities in the Village and surrounding area.
- C. Term. The term for all members of the advisory board shall begin on the first day of January in even-numbered years, and shall expire on the last day of December two years thereafter, or when each member's respective successor has been duly appointed and qualified. Members may be renominated for up to two additional successive terms.
- D. Service of members. Members of the advisory board shall serve at the pleasure of the governing body and may be removed at any time, with or without cause.
- E. Replacement of members. Upon the death, removal, resignation, change of residence from the Village, or inability of a member of the board to act, a vacancy on the advisory board shall exist. This vacancy shall be filled by appointment by the Mayor for the unexpired term of such member, subject to confirmation by the governing body.

- F. Open meetings. The advisory board shall hold open meetings, pursuant to the state Open Meetings Act,<sup>5</sup> and shall abide by the rules and regulations for the conduct of public meetings as promulgated by the governing body.

**§ 105-17. Eligible use of lodger's tax proceeds. [Amended 12-11-1996 by Ord. No. 119]**

Subject to the limitations contained in NMSA 1978, § 3-38-15, a municipality imposing an occupancy tax may use the proceeds from the tax to defray costs of:

- A. Collecting and otherwise administering the occupancy tax, including the performance of audits required by the Lodgers' Tax Act pursuant to guidelines issued by the Department of Finance and Administration;
- B. Establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities, attractions or transportation systems of the municipality or the county in which the municipality is located;
- C. The principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by NMSA 1978, § 3-38-23 or 3-38-24.
- D. Advertising, publicizing, and promoting tourist-related attractions, facilities and events of the municipality or county and tourist facilities or attractions within the area;
- E. Providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the municipality; or
- F. Any combination of the foregoing purposes or transactions stated in this section, but for no other municipal purpose.

**§ 105-18. Contracting for services. [Added 12-11-1996 by Ord. No. 119]**

- A. The governing body may contract for the management of programs and activities funded with revenue from the tax authorized in NMSA 1978, § 3-38-15. The governing body shall require periodic reports to the governing body, at least quarterly, listing the expenditures for those periods. Within 10 days of receiving the reports, the governing body shall furnish copies of them to the advisory board. Funds provided to the contracting person or governmental agency shall be maintained in a separate account established for that purpose and shall not be commingled with any other money.
- B. A person or governmental agency with whom a municipality contracts under this section to conduct an activity authorized by NMSA 1978, § 3-38-21, shall maintain complete and accurate financial records of each expenditure of the tax revenue made and, upon request of the governing body, shall make such records available for inspection.

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5. Editor's Note: See NMSA 1978, § 10-15-1 et seq.



- C. The occupancy tax revenue spent for a purpose authorized by the Lodgers' Tax Act may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly for that purpose.
- D. A person or governmental agency with whom the Village contracts under this section may subcontract with the approval of the governing body. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records.

## ARTICLE II

### Hold Harmless Gross Receipts Tax

[Adopted 9-9-2015 by Ord. Nos. 190, 191 and 192]

#### § 105-19. Imposition of tax.

There is imposed on any persons engaging in business in this municipality for the privilege of engaging in business in this municipality an excise tax equal to 1/8 of 1% (0.125%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.<sup>6</sup> The tax imposed under this article is pursuant to the Municipal Local Option Gross Receipts Taxes Act as it now exists or as it may be amended<sup>7</sup> and shall be known as the "municipal hold harmless gross receipts tax."

#### § 105-20. General provisions.

This article hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.<sup>8</sup>

#### § 105-21. Specific exemptions.

No municipal hold harmless gross receipts tax shall be imposed on the gross receipts arising from:

- A. Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality;
- B. A business located outside the boundaries of a municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to Subsection C of NMSA 1978, § 7-1-6.4; or
- C. Direct broadcast satellite services.

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6. Editor's Note: See NMSA 1978, § 7-9-1 et seq.

7. Editor's Note: See NMSA 1978, § 7-19D-1 et seq.

8. Editor's Note: See NMSA 1978, § 7-9-1 et seq.

**§ 105-22. Dedication.**

Revenue from the municipal hold harmless gross receipts tax will be used for the purpose(s) listed below:

- A. General municipal purposes and operation.

**§ 105-23. Effective date.**

The effective date of the municipal hold harmless gross receipts tax shall be either January 1 or July 1, whichever date occurs first after the expiration of three months from the date this article is adopted.