

HOUSE BILL 3279

By Ford S

AN ACT relative to the levy of a privilege tax on the occupancy of any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourist camp, tourist court, tourist cabin, campground, motel or any place in which rooms, lodgings or accommodations are furnished for transients for a consideration in Hamblen County.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. For the purposes of this Act:

(a) "Clerk" means the county clerk of Hamblen County, Tennessee.

(b) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.

(c) "County" means Hamblen County, Tennessee.

(d) "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.

(e) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings or accommodations in any hotel.

(f) "Operator" means the person operating the hotel whether as owner, lessee or otherwise, and shall include governmental entities.

(g) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, governmental unit other than the United States or any of its agencies, or any other group or combination acting as a unit.

(h) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings, spaces or accommodations in a hotel for a period of less than thirty (30) continuous days.

SECTION 2. The legislative body of Hamblen County is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient, in an amount of five percent (5%) of the rate charged by the operator.

SECTION 3. The proceeds received by the county from the tax shall be designated and used for the operation, maintenance and conduct of Cherokee Park as a park for public recreation.

SECTION 4. Such tax shall be added by each operator to each invoice prepared by the operator for the occupancy of the hotel. Such invoice shall be given directly or transmitted to the transient and shall be collected by such operator from the transient and remitted to Hamblen County.

When a person has maintained occupancy for thirty (30) continuous days, that person shall receive from the operator a refund or credit for the tax previously collected or charged, and the operator shall receive credit for the amount of such tax if previously paid or reported to the county.

SECTION 5. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

SECTION 6.

(a) The tax levied shall be remitted by all operators who lease, rent or charge for any rooms or spaces in hotels within the county, to the clerk or such other officer as may by resolution be charged with the duty of collection thereof, not later than the twentieth (20th) day of each month for the preceding month. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for occupancy, whether prior to, during or after occupancy, as may be the custom of the operator. If credit is granted by the operator to the transient, then the obligation to the county entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the operator in accounting for and remitting the tax levied by this act, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the clerk in the form of a deduction in submitting the report and paying the amount due by such operator, provided the amount due was not delinquent at the time of payment.

SECTION 7. The county clerk, or other authorized collector of the tax, shall be responsible for the collection of the tax and shall place the proceeds of such tax in accounts for the purposes stated herein. A monthly tax return shall be filed under oath with the clerk by the operator with such number of copies thereof as the clerk may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be

developed by the clerk and approved by the Hamblen County legislative body prior to use. The clerk shall audit each operator in the county at least once per year and shall report on the audits made on a quarterly basis to the county legislative body.

The county legislative body is hereby authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this act, including the form for such reports.

SECTION 8. Taxes collected by an operator which are not remitted to the clerk on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and is liable for an additional penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Each occurrence of willful refusal of an operator to collect or remit the tax, or willful refusal of a transient to pay the tax imposed, is a violation of this act and may result in the imposition of a civil penalty not to exceed fifty dollars (\$50.00).

SECTION 9. It shall be the duty of every operator liable for the collection and payment to the county of any tax levied pursuant to this act to keep and preserve for a period of three (3) years all records necessary to determine the amount of such tax, which records the clerk shall have the right to inspect at all reasonable times.

SECTION 10. The clerk in administering and enforcing the provisions of the act shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67, Tennessee Code Annotated, or otherwise provided by law for the county clerks.

For the county clerk's services in administering and enforcing the provisions of the act, the county clerk shall be entitled to retain as a commission five percent (5%) of the taxes so collected.

Upon any claim of illegal assessment and collection, the taxpayer has the remedies provided in Title 67, Tennessee Code Annotated, it being the intent of this act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected

under the authority of this act shall also apply to the tax levied pursuant to this act. The provisions of Tennessee Code Annotated, Section 67-1-707 shall be applicable to adjustments and refunds of such tax. With respect to the adjustment and settlement with taxpayers, all errors of county taxes collected by the clerk under the authority of this act shall be refunded by the clerk.

Notice of any tax paid under protest shall be given to the clerk and the Hamblen County Executive is the designated county officer against whom suit may be brought for recovery.

SECTION 11. The proceeds of the tax authorized by this act shall be used for the purposes stated in Section 3 of this act.

SECTION 12. The application of the Hamblen County tax on the privilege of occupancy of a hotel imposed herein shall be limited to the occupancy of hotels located within its boundaries but outside the boundaries of any municipality which has levied a tax on such occupancy prior to the adoption of this tax by Hamblen County, in accordance with the provisions of Tennessee Code Annotated, Section 67-4-1425.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Hamblen County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body to the secretary of state.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on the first day of the month following approval as provided in Section 14, the public welfare requiring it.