

**TOWN OF MERCER
COUNTY OF IRON
MERCER WISCONSIN 54547**

**ACCOMMODATIONS TAX ORDINANCE #2009-01
FOR THE TOWN OF MERCER**

WHEREAS, Section 66.0615 of the Wisconsin Statutes provides for the imposition of an Accommodations Tax by Towns; and

WHEREAS, it is deemed to be in the best interests of the Town of Mercer to impose an Accommodations Tax for the general promotion of tourism, hospitality and recreation facilities of the Town of Mercer;

NOW, THEREFORE, the Town Board of the Town of Mercer does hereby enact the following Ordinance:

SECTION I

DEFINITIONS

- A. "Hotel" or "Motel" means a building or group of building in which the public may obtain accommodations for consideration, including, without limitation, such establishments as inns, housing, rooming houses, camps, rental structures for accommodations at campgrounds, apartment hotels, resort lodges and cabins, and any other building or group of buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than one month and accommodations furnished by any hospital, sanitarium, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations or associations inures to the benefit of any private shareholder or individual.
- B. "Gross Receipts" has the meaning as defined in Wisconsin Statutes, Section 77.51 (4) (a) (b) (c) insofar as applicable to receipts for providing accommodations, and is further defined as the total revenue received from the retail furnishing of rooms, lodging, or similar accommodations by a Hotel or Motel as defined herein calculated prior to the payment, imposition or expense of any cost, including but not limited to, rental commissions.
- C. "Rental Agents" means any person(s) or business who is not the lodging owner, but who is collecting payments for the rental of facilities as described above, for one or more lodging owners or businesses covered under this ordinance.
- D. "Transient" means any person residing for a continuous period of less than one month in a Hotel, Motel or other furnished accommodations available to the public.

- E. "Accommodations Tax" means a tax on the Gross Receipts derived from the business of furnishing, at retail, rooms or lodging to Transients by owners or operators of Hotels, Motels, Rental Agents and any other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations.
- F. "Accommodations Tax Permit" means a permit issued by the Town of Mercer annually to owners or operators of Hotels, Motels or other as defined in Section I (A) of this Ordinance.
- G. "Quarterly Accommodations Tax Return" means a form prescribed and provided by the Town Treasurer to the owners or operators of Hotels, Motels, Rental Agents or others for the purpose of computing and submitting payment of the Accommodations Tax on a quarterly basis to the Town.
- H. "Annual Accommodations Tax Return" means a form prescribed and provided by the Town Treasurer for the purpose of reconciling the books of account for owners and operators of Hotels, Motels, Rental Agents and others with the Quarterly Accommodations Tax Returns filed for the year.

SECTION II

ENACTMENT OF TAX

- A. Accommodations Tax. Pursuant to the Wisconsin Statutes, Section 66.0615, an Accommodations Tax in the amount of 4 ½ % is hereby imposed on the Gross Receipts derived from the business of furnishing, at retail, rooms or lodging to Transients by Hotel keepers, Motel operators, Rental Agents and other persons furnishing accommodations that are available to the public as defined in Section I of the Ordinance. Such Accommodations Tax shall not be subject to the selective sales tax imposed by Wisconsin Statutes, Section 77.52 (2) (a) (1), sales to the federal government, sales for resale or persons listed under Wisconsin Statutes 77.54(9a).
- B. Exception If the Gross Receipts include, as part of a package rate other goods and/or services, including but limited to, food, use of a boat and motor, and educational instruction, the tax referred to in paragraph A shall be applied only to that portion of the Gross Receipts as is applicable to the accommodations and shall not be applied to the non-accommodations components of the package rate. The determination will be made by the Town Treasurer upon application by the owner or operator of the facility. In the event the Town Treasurer is unable to determine the percentage of gross sales for providing accommodations, he or she shall refer the determination to the Town Board which shall make the final determination. The Town Board shall make such determination based on evidence presented to it by the owner or operator of the facility and after investigation and recommendation by its Accommodations Committee. The determination so made by the Town Board shall be based on the fair charge for the accommodations which are furnished other than those as an incident of membership. Such tax shall not be subject to the selective sales tax

imposed by Wisconsin Statutes 77.52 (2) (a) (1), sales to the federal government, sales for resale or persons listed under Wisconsin Statutes 77.54(9a).

C. Distribution of Tax The revenues collected from the Accommodation Tax shall be allocated as follows:

1. Twenty-five percent (25%) shall remain with the Town of Mercer; said funds shall be used first for cost of administration and any remaining balance may be used for the maintenance and improvement of recreational facilities and promotional projects relating to tourism, upon the advice and with the assistance of the Town's Tourism Committee.
2. Seventy-five (75%) to the Town of Mercer Chamber of Commerce for advertising and promotion of hospitality and tourist businesses, as contracted for by the Tourism Commission. The allocation and distribution shall be made within thirty (30) days after each calendar quarter.
- 3.

D. Exemption From Collection. For the tax year 2010, any person or business otherwise required to file a return and make payment to the Town of Mercer under this ordinance will be allowed an exemption from the requirement to collect and remit Accommodation Tax for any signed contract dated prior to adoption of this ordinance in which the contract guarantees the lodging rates, provided they comply with the following requirements:

(1) They must furnish the Mercer Town Treasurer with a list of clients who executed written contracts for 2010. The list of clients to be exempted must, without exception, be received or postmarked before January 15, 2010 and include the following items of information:

Name, address, telephone number, number and identity of units reserved, approximate price per unit, and arrival date.

SECTION III

CREATION AND DUTIES OF TOURISM COMMISSION

A: The Tourism Commission shall consist of 5 members who shall be appointed by the Town Chairman with a majority of the Town Board so present. The Tourism Commission will consist of the following representatives, who shall serve without compensation:

- (1) One resort Owner from the Town of Mercer located on the Turtle Flambeau Flowage.
- (2) One resort Owner from the Town of Mercer not located on the Turtle Flambeau Flowage
- (3) One Motel Owner from the Town of Mercer

- (4) One non-accommodation business Owner from the Town of Mercer.
- (5) One Mercer Town Board Member who shall serve as Chairperson.
- (6) Each member's term shall be for a one year period and each member may serve multiple terms

B: The Tourism Commission shall contract with the Mercer Area Chamber of Commerce who shall spend the room taxes on Tourism promotion and development.

C: The Tourism Commission and the Tourism entity, with whom it contracts, shall not use any of the room tax revenue to construct or develop a lodging facility.

D: The Tourism Commission shall track the use of room tax revenue expenditures and state its impact on generating paid overnight stays and overall economic improvement in the community. The Tourism Commission shall permit and allow inspections of its records pertaining to the use of the room tax funds upon request of the Town Board. The Tourism Commission shall provide a written report as determined by the Tourism Commission, no less than annually, and the report shall be available to the Town Board and general public upon request

E: For the purpose of this subsection an "Owner" referred to herein shall mean a person that is a resident of the Town of Mercer.

SECTION IV

ADMINISTRATION OF THE ACCOMMODATION TAX

- A. Administration. This Ordinance shall be administered by the Town of Mercer Treasurer.
- B. Application for the Accommodation Tax Permit. Every person furnishing rooms or lodging or owning or operating a Hotel or Motel as defined in Section I (a) of this Ordinance shall file annually with the Town Treasurer an application for an Accommodation Tax Permit for each place of business. Every application for the Accommodations Tax Permit shall be made upon a form prescribed and provided by the Town Treasurer and at no cost to the applicant.
- C. Issuing of Accommodations Tax Permits. The Town Treasurer shall grant and issue to each applicant a separate Accommodations Tax Permit for each place of business within the Town. Such Accommodations Tax Permit is not assignable and is valid only for the applicant in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be displayed conspicuously at the place for which issued.
- D. Quarterly Accommodations Tax Return and Tax Payment Due Dates. The Accommodations Tax is due and payable within thirty (30) days of close of each calendar

quarter. A quarterly Accommodations Tax Return shall be filed with the Town Treasurer by owners or operators of hotels, motels or other defined in Section I (a) of the Town, at the same time that said Accommodations Tax is due and payable.

- E. Annual Accommodations Tax Reconciliation Return Due Date. An annual Accommodation Tax Reconciliation shall also be required to be filed, along with any tax that may be due, with the Town Treasurer within thirty (30) days of the close of each calendar year. Said Annual Accommodations Tax Reconciliation shall summarize the Quarterly Returns, reconcile and adjust for errors in the Quarterly Returns, and shall contain additional information as the Treasurer may require on said form.
- F. Timely Filing of Returns. Any return required to be filed under the provisions of this Ordinance shall be postmarked by the United States Postal Service no later than the due date of such return and shall be considered filed in a timely manner.
- G. Extension of Time to File Returns. The Town Treasurer may, for good cause, grant an extension of time to file any Quarterly Accommodations Tax Return or Annual Accommodations Tax not to exceed one (1) month from the required filing date. Said extension will avoid the late filing penalty, but interest will accrue on any tax not paid by the original due date of the return.
- H. Record Keeping Requirement. Every person liable for the tax imposed by this Ordinance, shall keep or cause to be kept accurate records of Gross Receipts for the business or providing rooms or lodging in hotels or motels as defined in Section I of this Ordinance.
- I. Interest Charge for Unpaid Taxes. All Accommodation Taxes not paid by the due date of any return required by this Ordinance shall bear interest at the rate of twelve (12) percent per annum for the due date of the return until said tax is paid, exclusive of other penalties.
- J. Audit Procedures. If the Town has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, the Town may inspect and audit the financial records of any person subject to this Ordinance, by office of field audit, determine the tax required to be paid to the Town or the refund due any person under this Ordinance. This determination may be made upon the basis of the facts contained in the returns being audited or on the basis of any other information within the Treasurers possession.
- K. Confidentiality. All tax returns, schedules, exhibits, writings or audit reports relating to such returns, on file with the Town Treasurer are deemed to be confidential, except that the Treasurer may divulge their contents to the following and no others:
 - a. The persons who filed the return.
 - b. Officers or agents of the Town as may be determined necessary to administer this Ordinance or enforce collection thereof.

- L. Settlement. The Town Treasurer shall settle for Accommodations Taxes collected during any calendar quarter pursuant to a contract between the Town of Mercer Chamber of Commerce and the Tourism Commission. Such settlement shall be on a form prescribed by the Town Treasurer.

The Town of Mercer Room Tax Commission shall provide a monthly financial statement reflecting the proceeds that it receives and the amounts which it expends and for what purposes those amounts are expended.

SECTION V

ENFORCEMENT

- A. Revocation of Permit. When any person fails to comply with any provision of this Ordinance, the Treasurer may, upon ten (10) days written notification and after affording such person the opportunity to show do cause why his permit should not be revoked, or suspended, the Treasurer may revoke or suspend any or all of the permits held by such person under this Ordinance. In the event that such a permit is revoked or suspended, the Treasurer shall give to such person written notice of the same. The Treasurer shall not issue a new permit after the revocation of a permit until said person complies with the provisions of this Ordinance. A fee of ten (\$10) dollars shall be imposed for the renewal or issuance of a permit previously suspended or revoked.
- B. Estimate of Taxes for Failure to File. If any person fails to file a return as required by this Ordinance, within thirty (30) days following the due date, the Town Treasurer shall give said person written notice that a the Town will estimate the Gross Receipts of the business and calculate the Accommodations Tax thereon. In the event that said person fails to respond by written notification to the Treasurer within ten (10) days as to why said penalty should not be assessed, the Treasurer shall make an estimate of the amount of the Gross Receipts under this Ordinance. Such estimate shall be made for the period for which such person failed to file a return, based upon the prior year returns, if available, or upon any Quarterly Returns as have been filed with the Treasurer, or upon any such information as the Treasurer may obtain concerning the business. No refund or modification of the payment determined may be granted until the person files a correct room tax return and permits the municipality or district to inspect and audit his or her financial records.
- C. Late Payment Penalty. Any person who Fails to pay the Accommodations Tax, or any portion thereof, prescribed herein, by the due date set forth above, shall be subject to a forfeiture not to exceed 25% of the previous years' Accommodations Tax or \$5,000.00, whichever is less.
- D. False or Fraudulent Return. The Town may exchange audit and other information with the Department of Revenue and pursue any penalties provided therein.

- E. Failure to Allow Inspection. Any person who fails or refuses to permit the inspection of his or her business records by the Treasurer, after inspection has been duly requested by the Treasurer, shall be subject to a forfeiture of 5% of the Annual Accommodations Tax.
- F. Record Retention. Any Person or entity that is subject to the provisions of this Ordinance shall maintain, or cause to be maintained, accurate records of the Gross Receipts of said business for a period of three (3) years.
- G. Issuance of Citation. The Clerk of Treasurer of the Town of Mercer shall be authorized to issue a citation pursuant the Wisconsin State Statute 778.25 for any violations of this Ordinance.

SECTION VI

SERVERABILITY

- A. The provisions of this Ordinance shall be deemed severable. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase or portions of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION VII

REFERENCES

- A. References to the terms “person”, “anyone”, “other”, or like reference, shall be deemed to refer to a person, a sole proprietorship, a company, a partnership, a corporation, an LLC, an LLP, a municipal corporation and also a responsible officer, a responsible member, responsible officer or a responsible managing agent or any single proprietorship, partnership, company or corporation unless the context clearly indicates otherwise.

SECTION VIII

STATE LAW ALSO APPLIES

- A. Nothing contained in this Ordinance shall be deemed to limit or restrict the application of any State Law or administrative regulations of any state agency regulating the subject of this Ordinance.

SECTION IX

REPEAL OF CONTRARY OR INCONSISTENT ORDINANCES

All Ordinances or parts of Ordinance which are inconsistent or contrary to this Ordinance are repealed.

SECTION X

EFFECTIVE DATE

The Ordinance shall take effect upon passage and publication as provided by law.

Dated this 3rd day of September, 2009.

Motion made by Banaszak, seconded by Sendra.
4 “yes” votes; 1 “no” vote

MERCER TOWN BOARD

Chairman: James Kichak

Supervisor: James Lambert

Supervisor: Jeff Stenberg

Supervisor: Bonnie Banaszak

Supervisor: Toni Sendra

Attest: _____
Town Clerk: Opal Roberts

Published: