

HOUSE BILL 2405

By Winningham

AN ACT relative to the levy of a privilege tax on the rental of any rooms, lodgings, houseboats, or accommodations furnished to transients by any hotel, inn, marina, tourist camp, tourist courts, tourist cabins, campground, motel or any place in which rooms, lodgings or accommodations are furnished for transients for a consideration in Clay County.

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

SECTION 1. For the purposes of this act:

(1) "Clerk" means the county clerk of Clay County, Tennessee or such other officer as the county legislative body may direct;

(2) "Consideration" means the consideration charged, whether or not received, for the rental of any room, lodging or accommodations 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;

(3) "County" means Clay County, Tennessee;

(4) "Hotel" means any structure, space, or vessel, 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, marina, tourist camp, tourist court, tourist cabin, campground, houseboat, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration;

(5) "Houseboat" means a vessel fitted for use as a dwelling, a pleasure craft with a broad beam, a usually shallow draft, a large superstructure resembling a house that

contains space intended and designed for lodging and sleeping accommodations.

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

(7) "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;

(8) "Space" means the rental for personal use of, or the right to rent for the personal use of, any room, lodgings or accommodations in a hotel;

(9) "Transient" means any person who rents or is entitled to rent any rooms, lodgings, spaces, or accommodations in a hotel for a period of less than thirty (30) continuous days; and

SECTION 2. The legislative body of Clay County is authorized to levy a privilege tax upon the privilege of a transient renting any room, lodging or accommodations in a hotel, in an amount of two and one-half percent (2.5%) of the rate charged by the operator. The tax imposed is a privilege tax upon the transient renting such room, lodging or other accommodations in a hotel and is to be collected and distributed as herein provided. Such tax shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

SECTION 3. Such tax shall be added by each operator to each invoice prepared by the operator for the rental of the room, lodging or accommodations in a hotel to a transient. Such invoice shall be given directly or transmitted to the transient, a copy thereof to be retained and filed by the operator as provided in Section 8.

When a person has rented a room, lodging or accommodations in a hotel 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 4. 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 5.

(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 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 such rental, whether prior to, during or after the rental period expires, 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 county clerk for collecting the tax, the clerk shall be allowed two percent (2%) of the amount of the tax remitted by the operators.

(c) The clerk shall faithfully account for, make proper reports of, and pay over to the trustee of the county at monthly intervals, all funds paid to, and received by, such clerk for the privilege tax authorized by this act.

SECTION 6. The county clerk shall be responsible for the collection of the tax and shall place the proceeds of such tax in accounts as designated in Section 10 for the purposes stated therein. 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 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 7.

(a) 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.

(b) Each occurrence of knowing refusal of an operator to collect or remit the tax or knowing refusal of a transient to pay the tax imposed is a separate violation of this act and may result in the imposition of a civil penalty, to be imposed separately for each violation, not to exceed fifty dollars (\$50.00) upon a finding of such knowing refusal by a court of competent jurisdiction. As used in this section, "each occurrence" means each day.

(c) Nothing in this section shall be construed to prevent the county clerk or other authorized collector of the tax from pursuing any civil remedy available to the collector by law, including issuing distress warrants and the seizure of assets, to collect any taxes due or delinquent under this act.

SECTION 8. 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 9. 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. 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 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 resolution-authorizing levy of the tax shall designate a county officer against whom suit may be brought for recovery.

SECTION 10. The proceeds of the tax authorized by this act shall be deposited in a fund designated by the county legislative body to be used for tourism and economic development.

SECTION 11. The tax levied pursuant to the provisions of this act shall only apply in accordance with the provisions of Tennessee Code Annotated, Section 67-4-1425.

SECTION 12. 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 13. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of Clay County. Its approval or nonapproval shall be proclaimed by the presiding officer of such legislative body and certified to the secretary of state.

SECTION 14. 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 become effective as provided in Section 13.