

SENATE BILL 492

By Pody

AN ACT to amend Chapter 43 of the Private Acts of 2003; and any other acts amendatory thereto, relative to the hotel occupancy tax in the Town of Carthage.

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

SECTION 1. Chapter 43 of the Private Acts of 2003, and any other acts amendatory thereto, is amended by deleting the language in its entirety and substituting instead the following:

Section 1. As used in this act unless the context otherwise requires:

1. "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;

2. "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;

3. "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings, or accommodations in any hotel;

4. "Operator" means the person operating the hotel whether as owner, lessee or otherwise;

5. "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;

6. "Tax collection official" means the City Recorder or other official designated by the legislative body of the Town of Carthage to collect the taxes levied by this act; and

7. "Town" means the Town of Carthage, Tennessee; and

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

Section 2. The legislative body of the Town of Carthage is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient in the amount of five percent (5%) of the consideration charged by the operator. Such tax is a privilege tax upon the transient occupying such room and is to be collected as provided in this act.

Section 3. The proceeds received by the city from the tax shall be retained by the city and deposited into the general fund of the city or such other fund and for such purposes as designated by the legislative body of the Town of Carthage.

Section 4. Such tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of the hotel and given directly or transmitted to the transient. Such tax shall be collected by such operator from the transient and remitted to the Town of Carthage. 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 city.

Section 5.

(a) The tax levied shall be remitted by all operators who lease, rent, or charge for any rooms, lodgings, spaces, or accommodations in hotels within the city to the tax collection official, such tax to be remitted to such officer 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 occupancy, whether prior to, during, or after occupancy, as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation due to the Town of Carthage shall be that of the operator.

(b) For the purpose of compensating the operator for remitting the tax levied by this act, the operator shall be allowed two percent (2%) of the amount of the tax due and remitted to the tax collection official 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 6. The tax collection official shall be responsible for the collection of such tax and shall deposit the proceeds of such tax as provided in Section 3. A monthly tax return shall be filed under oath with the tax collection official by the operator with such number of copies thereof as the tax collection official 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 tax collection official and approved by the legislative body of the Town of Carthage prior to use. The tax collection official shall audit each operator in the city at least once a year and shall report on the audits made on a quarterly basis to the legislative body of the Town of Carthage. The legislative body is 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. 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 8. Taxes collected by an operator which are not remitted to the tax collection official on or before the due dates are delinquent. An operator is 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 unlawful and shall be punishable by a civil penalty not in excess of fifty dollars (\$50.00).

Section 9. It is the duty of every operator liable for the collection and payment to the city of any tax imposed by this act to keep and preserve for a period of three (3) years all records necessary to determine the amount of tax due and payable to the city. The tax collection official has the right to inspect such records at all reasonable times.

Section 10. The tax collection official, in administering and enforcing the provisions of this act, has as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67 of Tennessee Code Annotated or otherwise provided by law for county clerks. Upon any claim of illegal assessment and collection, the taxpayer has the remedies provided in Tennessee Code Annotated, Title 67. It is 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 under the authority of 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 city taxes collected by the tax collection official under authority of this act shall be refunded by the tax collection official. Notice of any

tax paid under protest shall be given to the tax collection official and the resolution authorizing levy of the tax shall designate a city officer against whom suit may be brought for recovery.

Section 11. The privilege tax levied by this act shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes.

Section 12. 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 2. This act has no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the Town of Carthage. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified to the secretary of state.

SECTION 3. For the purpose of approving or rejecting the provisions of this act, it is effective upon becoming a law, the public welfare requiring it. For all other purposes, it is effective as provided in SECTION 2.