



**Amherst County Board of Supervisors
County Ordinance No. 2023-2**

AN ORDINANCE, NO. 2023-2

Amending and reenacting of Chapter 14, Taxation, of Article IV – Transient Occupancy
Tax Code of the County of Amherst, Virginia.

Approved as to form and legality by the Amherst County Attorney

FIRST READING: Board of Supervisors, February 7, 2023

PUBLIC HEARING: Board of Supervisors, February 21, 2023

**AN ORDINANCE TO AMEND AND REENACT CHAPTER 14, TAXATION,
ARTICLE IV, TRANSIENT OCCUPANCY TAX**

WHEREAS, the Amherst County Board of Supervisors has been advised of the need to make necessary revisions to the transient occupancy tax ordinance in order to comply with state law and to address certain issues that have arisen related to the use of third party accommodation intermediary companies and organizations; and

WHEREAS, the Amherst County Board of Supervisors deems such revisions to be in the best interest of Amherst County, Virginia;

NOW, THEREFORE, BE IT ORDAINED by the Amherst County Board of Supervisors that Chapter 14, Taxation, Article IV, Transient Occupancy Tax, is hereby amended and reenacted as follows:

...

ARTICLE IV. TRANSIENT OCCUPANCY TAX

Sec. 14-96. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accommodations means any room or rooms, lodgings, or space at a Lodging Facility, as defined herein, for which a tax is imposed on the retail sale of the same pursuant to this article.

Accommodations fee means the room charge less the discount room charge, if any, provided that the accommodations fee must not be less than \$0.00.

Accommodations intermediary means any person other than an accommodations provider that (i) facilitates the sale of an accommodation and (ii) either (a) charges a room charge to the customer, which fee it retains as compensation for facilitating the sale; (b) collects a room charge from the customer; or (c) charges a fee, other than accommodations fee, to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitating the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations via a transaction directly, including one or more payment processors, between a customer and an accommodations provider.

"Accommodations intermediary" does not include a person (i) if the accommodations are provided by an accommodation provider operating under a trademark, trade name, or service mark belong to that person; (ii) who facilitates the sale of an accommodation if (a) the price paid by the customer to such person is equal to the price paid by such person to the accommodations provider for the use of the accommodations and (b) the only compensation received by such person for facilitating the sale of the accommodation is a commission paid from the accommodation provider to such person; or (iii) who is licensed as a real estate licensee pursuant to Article 1 of Chapter 21 of Title 54.1 of the Code of Virginia (1950, as amended), when acting within the scope of such license.

Accommodations provider means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

County means the County Amherst, Virginia.

Collector means the Treasurer of Amherst County. Commissioner of the Revenue means the Commissioner of the Revenue of the County of Amherst, Virginia, or any duly authorized deputies or agents.

Discount room charge means the full amount charged by the accommodation provider to the accommodation intermediary, or an affiliate thereof, for furnishing the accommodations. ~~Hotel means any public or private hotel, inn, hostelry, tourist home or house, motel, rooming house or other lodging place within the county offering lodging for compensation to any transient.~~

Lodging Facility means ~~space or room furnished any transient~~ any public or private hotel, inn, apartment hotel, hostelry, tourist camp, tourist cabin, tourist home or house, camping grounds, club, motel, rooming house, any place that offers short term lodging, or other place within the County offering accommodations for one or more persons at any one time, and the owner and operator thereof, who, for compensation, furnishes accommodations to any transients as hereinafter defined.

Person means individuals, firms, partnerships, associations, corporations, persons acting in representative capacity and combinations of individuals of whatever form and character.

Retail sale means a sale to any person for any purpose other than for resale.

Room charge means the total charge made to, or total price paid by or for, a transient in a retail sale for the use or possession of accommodations at any such Lodging Facility before taxes. "Room charge" includes any fee charged to the customer and retained as compensation for facilitating the sale, whether described as an accommodation fee, facilitation fee, or any other name.

Transient means any person who, for any period of less than thirty (30) consecutive days, either at his own expense or at the expense of another obtains accommodations in any Lodging Facility as hereinabove defined, for which a charge is made. ~~Lodging at any hotel.~~

Treasurer means the Treasurer of the County of Amherst, Virginia.

Sec. 14-97. Violations.

Any person convicted of willful failure or refusal to file a tax return at the times required by this article will be subject to criminal penalties. If the tax lawfully assessed in connection with the return that was filed is \$1,000 or less, then such failure or refusal to file will be punishable as violating or failing to comply with any of the provisions of this article shall be guilty of a class 3 misdemeanor. If the tax lawfully assessed in connection with the return that was not filed is more than \$1,000, then such failure or refusal to file will be punishable as a class 1 misdemeanor. In determining the penalty to be applied in the event that person has not filed a tax return as required by this article, the penalty will be based on the amount due to the county as determined by the Commissioner of the Revenue. Each such violation or failure or refusal shall constitute a separate offense. A and conviction shall not relieve any person from payment, collection or remittance of the tax, plus penalties and interest, as provided in this article.

Sec. 14-98. Amount of tax levied.

There is hereby imposed and levied a The tax equivalent to shall be five (5) percent of the total room charge paid by or for any such transient for the use or possession of accommodations less than thirty (30) days; provided, however, that the tax imposed by this section will not be imposed on any transient occupancy in any Lodging Facility that is located within any town that has imposed a tax on transient occupancy. Nothing contained in this section shall affect any authority granted any city or town to levy such a transient occupancy tax as provided in Code of Virginia, § 58.1-3819. The county tax limitations imposed pursuant to the Code of Virginia, § 58.1-3271, shall apply.

Sec. 14-99. Exemptions.

The following shall be exempted from the provisions of this article.

- (1) No charge for lodging paid to any hospital, medical clinic or convalescent home or home for the aged;
- (2) Charges for providing space in a mobile home park or travel trailer.

Sec. 14-100. Collection procedure.

- a) For any retail sale of accommodations facilitated by an accommodation intermediary, the accommodation intermediary will be deemed a facility making a retail sale of an accommodation. The accommodations intermediary must collect the

tax imposed pursuant to this article, computed on the total room charge, from the person paying for the accommodations at the time of payment for such accommodations is made and shall be liable for the same.

- b) For the purpose of compensating, a person for collecting, accounting or remitting the tax levied by this article, such person shall be allowed three (3) percent of the amount of the tax due and accounted for in the form of a deduction in submitting a return and paying in the amount due by such person; providing the amount due was not delinquent at the time of payment. No commission shall be allowed if the account due is delinquent. For any retail sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider must collect the tax imposed pursuant to this article, computed on the total room charge, from the person paying for the accommodations at the time payment for such accommodations is made and shall be liable for the same.

Sec. 14-101. Reports; remittance.

The person collecting the tax shall use such forms and make a record thereof, setting forth such information as the commissioner of the revenue may prescribe and require showing the amount of lodging charges collected and the tax required to be collected, and shall sign and deliver such reports to the collector with a remittance of such tax. Such report shall be made on or before the twentieth day of each month for taxes collected the preceding month. All payment of monies shall be made payable to the treasurer of the county.

(a) For any retail sale of accommodations facilitated by an accommodations intermediary, the accommodations intermediary must remit the tax imposed pursuant to this article to the Treasurer.

(b) For any retail sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider must remit the tax imposed pursuant to this article to the Treasurer.

(c) For any transaction for the retail sale of accommodations involving two or more parties that meet the definition of accommodations intermediary, nothing in this article prohibits such parties from making an agreement regarding which party will be responsible for collecting and remitting the tax, so long as the party so responsible is registered with the Commissioner of the Revenue for purposes of remitting the tax. In such event, the party that agrees to collect and remit the tax will be the sole party liable for the tax, and the other parties to such agreement will not be liable for such tax.

(d) The person collecting any such tax required pursuant to this article must make out a report on such forms and setting forth such information as the Commissioner of the Revenue may prescribe and require, showing the amount of total room charges collected, and the tax required to be collected, and must sign and deliver the same to the Commissioner of the Revenue at the time of remittance of such tax to the Treasurer.

(e) Such reports and remittances must be monthly on or before the 20th day of the month and covering the amount of tax collected during the preceding month. If the remittance is by check or money order, it must be payable to the county.

Sec. 14-102. Penalties; interest.

If any accommodations provider or accommodations intermediary fails or refuse to remit to the ~~county~~ Treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax by the treasurer, a penalty in the amount of ten (10) percent thereof and interest thereon at the rate of eight (8) percent per annum which shall be computed upon the taxes and penalty from the date such taxes are due and payable.

Sec. 14-103. Records.

It shall be the duty of every ~~person~~ accommodations provider or accommodations intermediary liable for the collection and payment to the county of any tax imposed by this article to keep and preserve all records as may be necessary for a period of two (2) years. Those records should show accurately the amount of such tax he may have been responsible for collecting and paid to the county. The commissioner of revenue may inspect such records at any reasonable time.

Sec. 14-104. Procedure for cessation of business.

Whenever any person required to collect and pay to the county any tax imposed by this article, shall cease to operate or dispose of his business, he shall notify the county treasurer of such fact and any tax payable under this article shall become immediately due and payable on the date such person shall cease to operate or dispose of his business. Otherwise such person who fails to properly notify the treasurer of such cessation of business shall be liable for such taxes through the succeeding collection date.

Secs. 14-105—14-110. Reserved.

§ 2. That this ordinance shall be in force and effect upon adoption.


Adopted this 21st day of February 2023.



Tom Martin, Chair
Amherst County Board of Supervisors

Member	Vote
Tom Martin, Chair	<u>AYE</u>
L. J. "Jimmy" Ayers, III,	<u>AYE</u>
Claudia D. Tucker	<u>AYE</u>
Drew Wade	<u>AYE</u>
David W. Pugh, Jr	<u>AYE</u>

ATTEST:



Jeremy S. Bryant, Clerk
Amherst County Board of Supervisors