



# County of Lackawanna

Lackawanna County  
Administration Building  
200 Adams Avenue  
Scranton, Pennsylvania  
18503

## Certified Copy

Ordinance: 12-0149

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File Number: 12-0149

Ordinance #221

Second Reading

Imposing a Hotel Tax

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First Reading: July 25, 2012

Second Reading: August 27, 2012

ORDINANCE #221

BOARD OF COMMISSIONERS  
OF THE  
COUNTY OF LACKAWANNA, PENNSYLVANIA

AN ORDINANCE IMPOSING A TAX OF SEVEN (7%) PERCENT OF THE CONSIDERATION RECEIVED BY AN OPERATOR OR HOTEL WITHIN LACKAWANNA COUNTY FROM EACH TRANSACTION OR RENTING A ROOM OR ROOMS TO ACCOMMODATE TRANSIENTS; AUTHORIZING THE ISSUANCE OF A CERTIFICATE OF AUTHORIZATION; SETTING FORTH PENALTIES FOR VIOLATION HEREOF; AND REPEALING ORDINANCE NO. 110 OF 1997.

WHEREAS, Lackawanna County is a Third Class County existing pursuant to the Laws of the Commonwealth of Pennsylvania; and

WHEREAS, the health, safety and general welfare of the taxpayers of Lackawanna County are directly dependent upon the continual encouragement, development, growth, expansion of business and industry, commerce and tourism within the County of Lackawanna; and

WHEREAS, the purpose of county owned tourist and recreational facilities, sports facilities, visitors centers, county municipal authorities, and the County's designated tourist promotion agency is the promotion, attraction, stimulation, development and expansion of business, industry, commerce and tourism throughout the County of Lackawanna; and

WHEREAS, Act 143 of 2012, adopted on July 12, 2012, allows for the imposition of a Seven (7%) Percent tax hotel tax for counties of the Third Class having a Second Class A City located therein.

WHEREAS, the continued financial support of the aforementioned facilities. Authorities and

agencies would provide benefits to the hotel industry throughout the entire County of Lackawanna.

**NOW THEREFORE**, the Board of Commissioners of the County of Lackawanna hereby ordains as follows:

**§ A. Short Title.**

This Ordinance shall be known and may be cited as "The Hotel Room Rental Tax Ordinance."

**§ B. Definitions.**

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

1. "CONSIDERATION." - Receipts, fees, charges, rentals, leases, cash, credits, property of any kind or nature, or other payment received by operators in exchange for or in consideration of the use or occupancy by a transient of a room or rooms in a hotel for any temporary period.

2. "COUNTY." - The County of Lackawanna.

3. "COUNTY COMMISSIONERS." - The Lackawanna County Commissioners.

4. "HOTEL" - A hotel, motel, inn, guest house, boarding house or other structure which holds itself out by any means, including, but not limited to, advertising, license, registration with an inn keepers' group, convention listing association, travel publication or similar association or with a government agency, as being available to provide overnight lodging or use of facility space for consideration to persons seeking temporary accommodation; any place which advertises to the public at large or any segment thereof that it will provide beds, sanitary facilities, or other space for a temporary period to members of the public at large; or any place recognized as a hostel. The term does not include any portion of a facility that is devoted to persons who have an established permanent residence or a college or university student residence hall.

(i) An establishment which has accommodations available to the general public as sleeping quarters for periods less than 30 days, is a hotel within the meaning of this definition, even though the establishment may have other accommodations which are used for purposes other than sleeping quarters, and even though the establishment may have other sleeping quarters which are available only for periods of 30 days or more.

(ii) An establishment such as a public summer camp which has any permanent buildings available to the public for use as sleeping quarters may be a hotel, even though some of its accommodations may be temporary structures, such as tents.

(iii) A private organization or institution which, in the ordinary course of its activities, provides sleeping accommodations to persons directly associated with it, is not a hotel. Where, however, an organization or institution, offers or makes available sleeping accommodations for the general public for periods less than 30 days, the organization or institution is considered to be operating a hotel with

respect to all occupancies.

5. "OCCUPANCY." - The use or possession or the right to the use or possession by any person other than a permanent resident of any room in a hotel for any purpose, or the right to the use or possession of the furnishings or the service accompanying the use of possession of the room.

6. "OCCUPANT" - A person, other than a permanent resident as defined herein, who, for consideration, uses, possesses or has a right to use or possess, a room or rooms in a hotel under a lease, concession, and permit, right of access, license or agreement. A person may be an occupant as defined herein, even though he does not use and does not intend to use a room or rooms as sleeping accommodations.

7. "OPERATOR." - An individual, partnership, limited partnership, nonprofit or profit making association or corporation, limited liability company, limited liability partnership, or other entity or other person or group of persons who maintain, operate, manage, own or have custody of or otherwise possess the right to rent or lease overnight accommodations in a hotel to the public for consideration.

8. "PATRON." - A person who pays the consideration for the occupancy of a room or rooms.

9. "PERMANENT RESIDENT." - A person who occupies a room or rooms in a hotel as a patron, or otherwise, for a period exceeding thirty (30) consecutive days. For the purposes of this Ordinance, said patron shall not be considered a Permanent Resident until their thirty-first (31st) day of occupancy, and shall be subject to the tax herein imposed for days one (1) through thirty (30).

10. "RENT" - The consideration received for occupancy as defined in this section valued in money, whether actually received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature. Also, any amount for which an occupant is liable for occupancy, as defined herein, without any deduction there-from whatsoever.

(i) The entire amount charged by a hotel operator for occupancy, as that term is defined in this section, constitutes rent under the law. Charges for services, facilities or accommodations which are offered by the hotel for the exclusive use of its hotel occupants, or which are furnished by the hotel to occupants without any charge in addition to that normally made for the room occupied by the persons, or at a rate less than that charged to persons who are not hotel occupants or residents, are deemed to be part of the rent. This is true whether charges for such services, facilities or accommodations are separately stated and itemized or not.

(ii) Services and accommodations which are available to the general public as well as to the hotel occupants or residents, and for which the hotel makes a charge to occupants or residents, at least equal in amount to the charge made to persons who are not hotel occupants or residents, are not deemed to accompany the use or possession of a hotel room, and the charges made for the services and accommodations are not considered a part of the rent, if the charges are separately stated and itemized. However, a lump sum is presumed to be rent, even though the lump sum may include charges for services and accommodations which, if separately stated and itemized, would not be considered part of the rent.

(iii) With respect to the computation, collection, reporting and remittance of tax upon rental charges which include a charge for meals, reference should be made to the "Imposition and computation of tax" section below.

11. "ROOM." - A space in a hotel set aside for use and occupancy by patrons, or otherwise, for consideration, having at least one (1) bed or other sleeping accommodation in a room or group of rooms.

12. "TAX" - Any tax, interest or penalty imposed or levied under the provisions of this ordinance.

13. "TOURIST PROMOTION AGENCY (TPA)." - An organization, agency or corporation designed to be such by the Board of Commissioners of the county in which the tax is imposed. The TPA shall be duly established, designated and recognized as the County's TPA in accordance with and pursuant to the Act of April 28, 1961 (P.L. 111, No. 50), known as the "Tourist Promotion Law".

14. "TRANSACTION." - The activity involving the obtaining by a transient or patron of the use or occupancy of a hotel room from which consideration is payable to the operator under an express or an implied contract.

15. "TRANSIENT." - A person who obtains accommodation in a hotel by means of registering at the facility for the temporary occupancy of a room for the personal use of the individual by paying a fee to the operator. A patron who engages a room for a period in excess of thirty (30) consecutive days, shall be considered a Transient and subject to the tax herein imposed until their thirty-first (31st) consecutive day of occupancy.

### **§ C. Imposition and Rate of Tax.**

1. There is hereby imposed a tax of Seven (7%) percent of the consideration received by each operator of a hotel within the County from each transaction of renting a room or rooms to accommodate transients. The tax shall be collected by the operator from the patron of the room and paid over to the County pursuant to §F(1) and shall be known as the Hotel Room Rental Tax. The tax shall be collected by the operator of the hotel from the occupant at the time the rent is due, whether on a daily, weekly or biweekly rental period basis. In the absence of evidence to the contrary, it is presumed that the rent is due at the expiration of a rental period.

2. Taxable rooms and facilities. The occupancy of a room in a hotel is subject to tax, including, but not limited to, sleeping rooms, living quarters, housekeeping accommodations, sample rooms, display rooms, function rooms, meeting rooms, conference rooms, banquets and dining rooms, ballrooms, theaters, auditoriums, kitchens, office, lobby space, garage facilities and commercial establishments. The use or possession, or right to use or possess, furnishings, services and accommodations which accompany the use or possession of a room, is also considered occupancy and is subject to tax.

3. Presumption of taxability. For the purpose of proper administration of the tax, it is presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent or occupancy is not taxable is upon the operator.

**§ D. Exemptions.**

1. Permanent Residents: A permanent resident, as the term is defined in this Ordinance, is exempt from Room Rental Tax in accordance with these rules and regulations.

2. Any person, organization or institution claiming exemption shall furnish the hotel operator a properly executed exemption certificate. In the case of a charitable organization, the form shall contain a charitable exemption number.

3. All organizations, persons, diplomats, state and federal employees which qualify for exemption under the Commonwealth's Hotel Occupancy Tax legislation, 61 Pa. Code § 38.2, shall qualify for exemption hereunder.

4. Any other organization not enumerated herein, claiming an exempt status under a particular statute shall make application to the Lackawanna County Treasurer, or their designee, for approval to use the exemption.

5. Records of exempt occupancies. The hotel operator shall maintain records to support and identify exempt occupancies. Exemption certificates, letters of exemption and other documents relating to exemptions from tax, are of no force and effect with respect to the tax imposed by the hotel room rental tax portion of the Ordinance with the exemption noted above.

**§ E. Registration.**

Within sixty (60) days of the approval of these Rules and Regulations or within sixty (60) days after commencing business, whichever is later, each Operator of any hotel shall register said hotel with the Office of the Lackawanna County Treasurer, or their designee, by completing the application form provided by the County. After the application is processed by the Treasurer, or their designee, the Operator of said hotel shall receive a certificate of authorization evidencing its authority to collect the Tax and said certificate shall at all times be posted in a conspicuous place in plain view of patrons on the premises.

**§ F. Deposit and Distribution of Tax Revenues.**

1. The Lackawanna County Treasurer, or his/her designee, is hereby designated as the collector of the Hotel Room Rental Tax, and shall collect the tax from the operator and shall deposit all funds in a special account established for this purpose. Said account shall be known as the Lackawanna County Treasurer's Hotel Room Rental Tax Account.

2. Upon receipt of said funds, the Lackawanna County Treasurer shall transfer Forty (40%) Percent thereof to Lackawanna County's legally sanctioned and duly designated Tourist Promotion Agency (TPA). The TPA shall be entitled to use said funds for the appropriate and reasonable operation, marketing and promotional expenses of the TPA.

3. The remaining Hotel Room Rental Tax revenues amounting to not more than Sixty (60%)

Percent of the total revenues, shall be used for the reasonable expenses associated with collection and enforcement of the tax; for county owned tourist and recreational facilities, sports facilities or visitor centers, or for other tourism related activities as determined by the County Commissioners.

**§ G. Reports, Returns, Payment and Collection of Taxes.**

1. All taxes collected by any operator in accordance with this Ordinance shall constitute a trust fund for the County and such trust shall be enforceable against such person and any person receiving any part of such fund without consideration, or knowing that the operator is committing a Breach of Trust; provided however, that any person receiving payment of a lawful obligation of the operator from such fund shall presume to have received the same in good faith and without any knowledge of the Breach of Trust.

2. The operator shall collect the tax imposed by the Ordinance from the patron of the room and pay it over to the County as provided herein. The operator, if he fails to collect the tax or pay it to the County when due, shall be liable to the County for the payment of the tax provided herein.

3. Every report and return shall be made upon a form furnished by the county.

4. Every operator shall transmit to the County, on or before the twenty-fifth (25th) day of each month, a return for the month proceeding the month in which the return is made, the amount of tax due from the operator for that month, and such other information as the County may require.

5. Every operator at the time of filing a return required by this section, shall compute and pay to the County the taxes shown as due on the return for the period in which the return is made.

6. Every operator shall maintain records, which shall be made available to the County Commissioners, the County Treasurer, the County Controller, or their designee, upon request, which shall include, but not limited to, the number of transactions in each hotel reflected on an hourly, daily, or weekly basis, the rate(s) charged for each occupancy, the consideration received from all transactions during the month for which the return is made, as well as such other information as the County may require.

7. If an operator enters the business or renting of hotel rooms subsequent to the effective date of this Ordinance, the first return shall be filed on the twenty-fifth (25th) day of the first month subsequent thereto. The first return and tax payment due shall be for all transactions occurring during the preceding month based upon the actual taxable transactions during the preceding month.

8. If any amount of tax due is not remitted by the due date, interest at the rate of three-fourths of one (0.75%) percent per month shall be added for each month or fraction thereof during which any Hotel Room Rental Tax shall remain unpaid or not properly remitted in accordance with these Rules and Regulations.

**§ H. Violations and penalties.**

Whoever makes any false or untrue statement on any return required by this part, or whoever refuses inspection of the books, records or accounts in his or her custody and control setting forth the

number of transactions subject to this tax, or whoever fails or refuses to file any return required by this part shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not more than Six Hundred (\$600.00) Dollars and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than Thirty (30) days. The action to enforce the penalty herein prescribed may be instituted against any Operator or person in charge of the business who shall have failed or who refuses to file a return required by this part.

In addition to the penalties imposed herein, the Treasurer, or their designee, shall have the authority to revoke the Certificate of Authorization of any operator who violates the requirements of this Ordinance.

**§ I. Appeal.**

Any operator aggrieved by any decision of the Treasurer, or their designee, with respect to the amount due for the Hotel Room Rental Tax, interest and costs, may appeal the decision of the Treasurer, or their designee, to the Court of Common Pleas of Lackawanna County, pursuant to the applicable rules of the Pennsylvania Rules of Civil Procedure. The County reserves the right to waive such interest and costs based upon good cause shown.

**§ J. Refunds.**

Whenever the amount of the Hotel Room Rental Tax, interest and costs has been overpaid, paid more than once, or erroneously collected or received by the Treasurer, or their designee, under this Ordinance, the overpayment may be refunded to the operator provided that a verified written claim is filed by the operator with the Treasurer within three (3) years of the date of payment stating the specific grounds upon which the claim is founded. The operator must either return the refunded payment to the Patron or credit such amount to the Patron's account.

If the Patron's whereabouts are unknown or unascertainable after reasonable investigation, such refund shall be resubmitted by the operator to the Treasurer and shall be subject to the applicable escheat laws and statutes.

**§ K. Repealor.**

Except as set forth hereafter, Lackawanna County Ordinance No. 110 of 1997, all ordinances or parts of ordinances inconsistent herewith are hereby REPEALED. Nothing herein shall be construed to repeal the imposition and collection of any Hotel Room Rental Tax, plus applicable penalties and interest, for calendar year 2012 and all prior calendar years, as the same existed prior to this amendment.

**§ L. Severability.**

If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance.

**§ M. Effective date.**

This ordinance shall be in full force and effect ten (10) days after publication as required by law, or September 10, 2012, whichever shall occur later.

ADOPTED at a regular meeting of the Board of Commissioners of Lackawanna County held  
on August 27, 2012.

COUNTY OF LACKAWANNA

  
JIM WANSACZ

  
COREY D. O'BRIEN

  
PATRICK M. O'MALLEY

ATTEST:

  
MARIA ELKINS  
CHIEF OF STAFF

Approved as to form and legality:

  
DONALD J. FREDERICKSON, ESQUIRE  
COUNTY SOLICITOR