Transient Guest Tax

What is the Transient Guest Tax?
Tax on lodging rentals paid by guests renting for not more than 28 days
Must be collected by businesses with more than 2 rooms to rent
Levied by local gov’ts for financing tourism activities
As of July 2016
102 cities and 34 counties levy the tax
Accounting for 817 establishments (636 in cities, 181 in counties)
Amount Distributed – FY 2016
Total $45,631,776
County $3,233,804
City $42,397,972
Highest Rate = 9% (Mission, Overland Park)

Why 28 days and 2 rooms?
28 days – if more, conflicts with monthly boarding facilities
2 rooms - probably didn’t want to impose burden on a 1 or 2 room business

How to Enact the Tax
A city or county can levy the tax
Pass ordinance (city) or resolution (county), subject to protest period (vote can be held as well)
Notify the department of the tax, includes sending copy of ordinance or resolution
Tax starts on the 1st day of a calendar quarter, 30 days after notification to department
Non-uniformity of statutes - Chartering out of the statute – Home rule authority

AG Opinion 1982-17 Home Rule Authority - Lenexa
Can opt-out of rate limit, committee composition, use of funds.
Can’t change any aspects of the statute dealing with the administration of the tax

Statutory limitation
If a county has a tax, the city can not
If a city has a tax, the county can have one for the rest of the county, but not for that city
Cities have worked with their county to work around limitation using interlocal agreements

How can the money be used
For convention and tourism promotion:
Activities to attract visitors into the community
Support of those activities & organizations which encourage increased lodging
Other purposes if detailed in charter ordinance
Local gov’t has a lot of leeway in determining what constitutes promotion.

Attorney General Opinions
2006-22 Fort Scott renovation of visitor center & Chamber of Commerce web site
1987-195 Overland Park and use of tax for sales tax bonds
2002-31 Bethany College and charging transient guest
1991-110 Lawrence and handicapped accessibility

Who has to pay?
A “transient guest” means a person who occupies a room (sleeping accommodation) from a hotel, motel or tourist court for not more than 28 consecutive days.

Who doesn’t pay?
Federal Government - direct purchases are exempt
Room rentals for greater than 28 consecutive days are not taxable
Corporation renting rooms at least 29 consecutive days for employees
Individuals staying at least 29 consecutive days
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What Businesses have to collect the tax?
Businesses holding themselves out to the public, with more than 2 bedrooms furnished for rent
Hotels, motels, bed & breakfasts,
Accommodation brokers: Businesses which maintains an inventory of two or more rooms in one or more locations which are offered for pay to a person for not more than 28 days.

What Businesses don’t have to collect the tax?
Kansas Dept of Wildlife & Park cabins - don’t meet the definition of a Person
RV parks - not renting out a structure or building
Colleges and universities – not engaged in the business of renting room. Not a hotel, motel
Lodges, B&B with only 1 or 2 sleeping rooms – don’t meet the more than 2 room definition

Collection and Enforcement of the tax
Returns due to the department by 25th of the following month (Sept sales due Oct 25th)
Delinquent or under paid returns enter Tax Collection’s processing
Letters mail, then phone calls. Can lead to more aggressive action
Usually, business delinquent in other taxes at the same time (sales tax)
If you believe a business not paying:
Contact city/county to have them check against tax entity report
Contact the department and we will investigate.

Distribution of the Tax
Transient Guest is a local tax, all money returned to the city or county, except 2% processing fee
Distributions sent quarterly, 30 days after end of calendar year quarter (end of Jan., April, July, Oct.)
Consists of data received during prior quarter with a received date within that quarter.
Returns received late, or if not validated until 1st of next quarter, falls to next distribution

Reports and Confidentiality Restraints
Tax Entity Reports available to city and county officials – lists tax by business
Department can not divulge individual taxpayer data except to city/county officials
Tourism offices do not have access to individual taxpayer data
Statistical reports are available on our website (under Media/Statistics)
Confidentiality statutes require we not divulge tax collections
No data published when less than 5 reporting locations

Sales tax Connection
Rooms are subject to state and local sales tax - must have 4 bedrooms vs. more than 2
Local tax is distributed back to cities and counties
There are more exemptions – all government, schools, churches
Some cross checking occurs in processing between the two taxes

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Kansas Department of Revenue:  http://www.ksrevenue.org/

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