



# Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

## Office of the Tribal Chairperson

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### HOTEL ROOM TAX REGULATIONS

REG-WOS 2024-001 041824-02

#### Section I. Purpose

These regulations implement the hotel tax imposed by the Hotel Room Tax Statute, Waganakising Odawak Statute 2024-001 (“Hotel Tax Act”).

#### Section II. Authority

The Administrative Procedures Statute authorizes the Executive to promulgate “Regulations for such Statutes that the Executive deems necessary for the implementation of the intent of the Statute and shall forward such Regulations to the Tribal Council in accordance with this Statute.” Section IV(A), Waganakising Odawak Statute 2015-019. The Executive deems regulations necessary to implement the Hotel Tax Act.

#### Section III. Definitions

- A. “Hotel” means any facility that offers rental lodging to members of the public.
- B. “Long-Term Stays” means continuous hotel room stays longer than one (1) month by the same occupant. A month is defined as 30 days or the full month of February.
- C. “Non-Profit Organizations” means entities organized and formally certified as such under the laws of the LTBB or other governments.
- D. “Other Governments” means tribal, federal, and state governments, including their agencies and subdivisions.
- E. “Revenue” means all non-tax income and rents arising from the overnight use, enjoyment, or occupancy of any portion of the Hotel property or that are received from the sale of accommodation to guests.
- F. “Tribal Citizen” means an enrolled member of the Little Traverse Bay Bands of Odawa Indians.
- G. “Tribe” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.

#### Section IV. Duties

- A. As the subdivision of the LTBB responsible for collecting the Hotel Tax and administering the Hotel Tax Act and these regulations, the Department of Commerce shall have the following duties and authority:

Approved by Tribal Council 05/09/2024

Approved by Executive 04/18/2024

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1. To establish rules of procedure for the prompt and efficient application, interpretation, effectuation, administration, and enforcement of the Hotel Tax Act and these regulations. Such rules must state the date they take effect, which shall be no fewer than seven days after the Department of Commerce publishes them or causes them to be published on the LTBB website.
  2. To, upon request or upon its own initiative, address ambiguities in the Hotel Tax Act or Regulations. Guidance, tax rulings, or other bulletins issued pursuant to this subsection shall be effective upon publication to the LTBB website.
  3. To prepare such forms, instructions, manuals, and other materials as are necessary for the endorsement of the tax, the auditing of tax returns, and the efficient administration of the Hotel Room Tax Act and these implementing regulations.
  4. To maintain books and records that are adequate for the proper administration of these regulations including such books and records as will adequately show the collection of all taxes, fines, fees, interest, and penalties levied and imposed pursuant to these regulations. Such books and records may be inspected, or copies thereof obtained, in accordance with the Public Documents Statute and Regulations. A Hotel or its designee shall have access to such books and records on the same terms as Tribal Citizens under the Public Documents Statute and Regulations.
  5. To deliver all taxes, fines, fees, interest, and penalties collected to the Chief Financial Officer or designee to deposit said monies in a manner consistent with other Tribal monies. Said monies and any interest accrued shall be tracked and used as authorized by the Tribal Council in accordance with Tribal law.
  6. To enforce the provisions of the Hotel Room Tax Act and these regulations, including, when necessary, making complaint to the Tribal Court in regard to any violation hereof.
- B. As the entity bearing the legal incidence of the Hotel Tax Act, each Hotel shall have the following duties:
1. To account for, collect, and remit all taxes levied by the Hotel Tax Act, plus any interest and penalties imposed by the Department of Commerce;
  2. To maintain and preserve suitable and adequate books, records, and accounts that are sufficient to enable both the Hotel and the Department of Commerce to determine the correct amounts of taxes owed, imposed and paid;
  3. To verify the exemption eligibility of both organizations and patrons and obtain adequate information from each entity to whom the Hotel grants an exemption. Prior to granting an exemption, the Hotel must request and receive the name of the entity and individual(s) claiming an exemption and further, must obtain a complete, signed Exemption Certificate as prescribed by the Department of



Commerce or in a substantially similar form that requires the patron benefitting from the exemption to sign the following certification:

Guest certification: I declare that I am an occupant of this hotel on official business sanctioned by the governmental or non-profit organization named above and that all information shown on this document is true and correct. I further understand that I may be charged with a criminal offense and subject to civil penalties if I knowingly use false or inaccurate information to claim an exemption.

4. To comply with the lawful instructions and protocols and abide the lawful decisions of the Department of Commerce.

### **Section V. Long-Term Stays**

- A. Long-term stays are exempt from the LTBB Hotel Room Tax.

### **Section VI. Report and Payment**

- A. Due Date of Monthly Report and Tax Payment. On or before the fifteenth day of each month, each Hotel shall submit to the Department of Commerce:
  1. Such facts and information as are required by the Department of Commerce on forms furnished for the proper administration of these regulations; and
  2. Payment in the amount of 6% of the Revenue received the preceding month, excluding room sales to enrolled citizens of the LTBB and any exemptions granted pursuant to the Hotel Tax Act.
- B. Due Date of Annual Return. By February 28th of each year, each Hotel shall file the prior year's Hotel Tax annual return on a form and in the manner prescribed by the Department of Commerce.

### **Section VII. Interest**

- A. Accrual. Interest on unpaid tax, and on fines, fees, and penalties shall accrue on a monthly compound basis based on the actual number of days elapsed since the due date, until paid. All interest shall be collected as a part of the tax.
- B. Rate. The initial interest rate for calendar year 2024 is two percent (2%) per month. No later than 15th of December in 2024 and each calendar year thereafter, the Department of Commerce shall publish on the LTBB website a bulletin setting the interest rate for the following calendar year.

### **Section VIII. Records**

- A. Content. Hotels shall preserve and maintain complete and accurate records that include, at a minimum:

1. The number of rooms occupied;
  2. Invoices showing the amount of tax required to be paid and actually paid by the Hotel;
  3. Invoices showing the amount of fees charged, if any;
  4. Any other information deemed necessary by the Department of Commerce; and
  5. Completed Exemption Certifications with the dates, number of rooms, and organizations granted a discretionary exemption.
- B. Availability for Inspection. Upon reasonable notice by the Department of Commerce, all occupancy and financial records of a Hotel shall be open to inspection by the Department of Commerce or its designee at all reasonable times at the Hotel's place of business within the jurisdiction of the LTBB.
- C. Confidentiality. The invoices, receipts, and records related to a Hotel's business, sales, and tax are deemed confidential with the following exceptions that the Department of Commerce may divulge their contents to the Chair, Vice Chair, Tribal Council, and the employees of the foregoing. General information such as aggregate and total revenue figures, tax revenue, and number of exemptions granted, are not confidential.
- D. Duration. Hotels shall maintain the records required herein for three years from the date the amount of tax determined to be due becomes final.

## **Section IX. Penalties**

The Department of Commerce, to the extent a Hotel's books and records or any other evidence requires a payment of a tax in excess of that paid by a Hotel, in addition to the additional tax and interest thereon, may impose a penalty of five percent (5%) of the amount of the unpaid tax per month or fraction thereof, after the due date thereof, until paid. Such penalty shall not, however, exceed twenty-five percent (25%) of the unpaid tax. Any penalty shall be collected as part of the tax.

## **Section X. Abatements**

- A. Request for Hearing. A hotel may, within 10 days after payment of the tax under protest, file with the Department of Commerce, upon forms furnished by the Department of Commerce, an application for a hearing for an abatement or refund of taxes imposed hereunder. The Department of Commerce Director, or, in the Director's absence, the Chief Financial Officer's designee, shall serve as the hearing officer and the applicant shall submit to the Director all the facts necessary to render a competent determination.
- B. Notice of Hearing. The Department of Commerce, within ten (10) days of receipt of the application, shall notify the applicant of the date of the hearing, which shall not be more than forty-five (45) days from the date of the receipt of the application.



- C. Hearing. At the time and place set for the hearing, the applicant or designee shall be given an opportunity to be heard and to present evidence as the applicant deems necessary to justify an abatement or refund of taxes.
- D. Determination. At the hearing, the Department of Commerce Director shall listen to the facts, arguments, and evidence presented by the applicant. Within three business days of closing of the record, the Department of Commerce shall make a decision regarding abatement or refund of the applicant's tax, considering, among other factors, the following:
1. Whether failure to file was due to reasonable cause and not due to willful neglect.
  2. Whether the person responsible for payment of the tax inadvertently overpaid.
  3. Whether charges for accommodations remain unpaid and there remains little likelihood that such charges will be collected.
  4. Fairness in light of the circumstances.

Based on such factors, the Department of Commerce may grant abatement or refund of taxes imposed under these regulations. The Department of Commerce shall issue its determination dated and in writing.

- E. Appeal. After exhausting the foregoing administrative remedy, a person aggrieved by the decision of the Department of Commerce may file an action in the Tribal Court for a determination of such abatement or refund. The action shall be time-barred unless it is filed within 90 days of the date of the decision. On review, the Court may set aside the decision if it is arbitrary, capricious, an abuse of discretion, or contrary to applicable law.

#### **Section XI. Tax as an Additional Tax**

The taxes levied pursuant to the Hotel Tax Act, WOS 2024-001, shall be in addition to any other taxes, charges, or fees.

#### **Section XII. Severability**

If any section, subsection, sentence, clause, phrase, or portion of these regulations is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

#### **Section XIII. Amendment**

These regulations may be amended in accordance with the Tribe's administrative procedures.

#### **Section XIV. Effective Date**

The obligations imposed herein take effect beginning the first month following their approval by the Tribal Council.

### CERTIFICATION

As Chairperson, I certify that I approve of these Hotel Room Tax Regulations.

Date: 04-18-2024



Regina Gasco, Tribal Chairperson

Received by the Tribal Council Office on: by: April 23, 2024 Marlene Taylor

As the Legislative Leader and Tribal Council Secretary, we certify that these Hotel Room Tax Regulations were approved by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on May 9, 2024 at which a quorum was present, by a vote of 6 in favor, 0 opposed, 0 abstentions, and 3 absent.

Date: 5/10/2024



Marcella Reyes, Legislative Leader

Date: 5/10/2024



Emily Proctor, Secretary