BERKS COUNTY TREASURER'S OFFICE

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PROMULGATION OF AMENDED AND RESTATED RULES AND REGULATIONS FOR THE COLLECTION OF THE HOTEL ROOM RENTAL TAX AS ADOPTED BY THE COUNTY OF BERKS, PENNSYLVANIA BY ORDINANCE NO. 1-97 ADOPTED ON JANUARY 6, 1997, AS AMENDED BY ORDINANCE 1-13 ADOPTED ON JUNE 27, 2013

Pursuant to the powers vested in me and by the General Assembly of Pennsylvania and the Hotel Room Rental Tax Ordinance of Berks County, as amended, I herewith amend and restate in their entirety the Rules and Regulations for the Collection of the Hotel Room Rental Tax, concerning the registration of hotels/inns with the County Treasurer, the collection of the tax, payment thereof, reports and returns of the same, distribution of the proceeds of tax after deduction of expenses of the County Treasurer, and penalties for the violation of these rules and regulations and/or the terms of the Hotel Room Rental Tax Ordinance of Berks County.

Inquiries and advisory opinions regarding the rules and regulations shall be directed to the Office of the Berks County Treasurer. These rules and regulations are subject to further amendment and promulgation of supplementary rules and regulations from time to time.

Dated: June 1, 2016

A. Dennis Adams, CPA
Berks County Treasurer

COUNTY OF BERKS

HOTEL ROOM RENTAL TAX

AMENDED AND RESTATED RULES AND REGULATIONS

Effective Date: June 1, 2016

PART I

GENERAL

A. PURPOSE

The purpose of these Rules and Regulations are to establish the procedures for the collection of the Hotel Room Rental Tax by the Operators in the Market Area of Hotels located in Berks County from Patrons, establish the procedures for the remittance of the Hotel Room Rental Tax by the Operators to the Berks County Treasurer ("Treasurer"), establish the official reporting procedures and forms to be utilized by the Operators and other relevant rules and regulations concerning the collection of the Hotel Room Rental Tax.

B. OBJECTIVES

These Rules and Regulations are designed to establish a uniform practice and procedure for the imposition and collection of the Hotel Room Rental Tax. The Rules and Regulations are intended as a guide to Operators to determine which Patrons are subject to the Hotel Room Rental Tax and the amount due by each Patron. The Rules and Regulations also establish the official forms for the reporting and remittance of the Hotel Room Rental Tax to the Treasurer, as well as general collection procedures.

C. DEFINITIONS

1. Incorporation by Reference: As used hereinafter, those terms which are defined in Section A of Ordinance 1-97, as amended by Ordinance 1-13 (the "Ordinance"), known as the Berks County Hotel Room Rental Tax, shall have the identical meaning for the purpose of these Rules and Regulations and are incorporated herein by reference.

2. Charity: As used herein, the term "Charity" shall mean the following:

(a) An organization whose primary activities meet the following criteria:

(i) Advances a charitable purpose. An organization advances a charitable purpose if it makes gifts of services or property for general public use which are designed to benefit an indefinite number of persons from an educational, religious, moral, physical or social standpoint.

(ii) Donates or renders gratuitously a substantial portion of its services. A substantial portion of the organization's services shall be provided without charge to the subjects of the charity or to persons or entities that are directly providing the service on its behalf.

(iii) Benefits a substantial and indefinite class of persons who are legitimate subjects of charity. An organization's gratuitous activity shall be "purely public," in that the public must be the beneficiary of the gift conferred by the organization. The scope of the recipients can be limited to a particular group of the public, so long as the group is a legitimate subject of charity. Legitimate subjects of charity are those that are unable to provide for themselves what the organization provides. Examples include the handicapped, the aged, the sick, children and the poor.

(iv) Relieves the government of some of its burden.

(v) Operates entirely free from private profit motive. An organization is not deemed to have a private profit motive merely because it hires employees and pays them reasonable compensation, or otherwise purchases at market rates other services that are required to carry out the charitable activity.

(b) The term includes trust forms of community chests, funds or foundations and private charitable foundations which hold funds from contributions, such as grants, endowments, gifts and gratuitous donations and which then distribute substantially all of the funds to exempt organizations that qualify as purely public charities and that will use the funds for charitable purposes.

(c) The term does not include an organization if any part of its funds may inure to the benefit of private shareholders or individuals other than for the payment of reasonable compensation for actual services rendered by the organization's employees.

(d) An organization's primary purpose cannot involve the promoting or sponsoring of a noncharitable fundraising event such as an athletic or other special event.

(e) An organization is not a charitable organization if a substantial part of its activities consists of carrying on propaganda or otherwise attempting to influence legislation.

PART II

RULES AND REGULATIONS

A. IMPOSITION OF TAX.

1. Rate of Tax: The Hotel Room Rental Tax is imposed at the rate of five percent (5%) on any Transaction.

2. Collection of Tax by the Operator: The Hotel Room Rental Tax shall be collected by the Operator of each Hotel, at the time of the Transaction, from each Patron who pays the Consideration of the Transaction.

3. Effective Date: The Hotel Room Rental Tax shall be applicable to all transactions specified in Section II.A.1. above, which occur on or after the effective date of the Ordinance.

B. REGISTRATION

Within thirty (30) days after the effective date of the Ordinance or within thirty (30) days after commencing business, whichever is later, each Operator of any Hotel shall register the Hotel with the Treasurer, by completing the application form provided by the Treasurer, a copy of which is attached in Exhibit "A". The Operator of the Hotel shall obtain from the Treasurer a temporary or permanent certificate of authorization evidencing the Operator's authority to collect

the Hotel Room Rental Tax, and the certificate shall at all times be posted in a conspicuous place on the premises of the Hotel.

C. ITEMS SUBJECT TO TAX

The Occupancy of any Room, for Consideration, is subject to the Hotel Room Rental Tax.

D. PERMANENT RESIDENTS

1. General: The Hotel Room Rental Tax shall be imposed for Occupancy by Transients and not by Permanent Residents. After a Patron has occupied a Room for thirty (30) consecutive days, the Patron is no longer a "transient" as defined in the Ordinance. The Patron's status as a "permanent resident" becomes effective at the expiration of the thirtieth consecutive day of Occupancy at the same Hotel and continues thereafter so long as the Patron's Occupancy remains continuous and uninterrupted at the same Hotel.

2. Procedure for Credits: If a Patron completes thirty (30) days of consecutive Occupancy, the Patron is a Permanent Resident and such status remains effective as long as the Patron's Occupancy continues uninterrupted. Upon a Patron obtaining Permanent Resident status the Patron shall be given a refund or credit by the Operator for the thirty (30) days preceding the Patron's achieving Permanent Resident status. The Operator is entitled to a credit for Operator's refund or credit to the Patron, the Operator's credit shall be noted on the next monthly Return filed by the Operator.

3. Guidelines for Implementation: A rental period, for the purpose of this subsection, is a period of time, for example: a day, week, month, or the like, during which, under and subject to the terms of a legally enforceable contract, a Patron has a continuous right to occupy a room or rooms in a Hotel and has paid or is legally found to pay Consideration therefor. (In the absence of evidence to the contrary, it is assumed that a rental period runs from the date of first occupancy or first payment of consideration to the date on which a subsequent payment or consideration is due.) A mere statement of intention to occupy or to permit occupancy, on the part of a Patron or Operator, or both, does not create a rental period unless the period in questions is the subject of a legally enforceable contract.

A Patron who merely has the right to use a room or rooms on intermittent days of a week or month cannot become a "Permanent Resident" even though the Patron cumulatively occupies a room for more than any thirty (30) day period.

The status of Permanent Residents only continues so long as the Occupancy or right of Occupancy continues uninterrupted. A Permanent Resident who breaks the consecutive and continuing Occupancy loses the status as a Permanent Resident and with respect to the Patron's next occupancy, the Patron does not resume the status of a Permanent Resident unless and until the Patron again completes thirty (30) consecutive days of Occupancy. A transfer from one Hotel to another, even though both Hotels are owned and/or operated by the same Operator, is a break in Occupancy. A mere change of rooms within the same Hotel is not a break in Occupancy for the purpose of Permanent Resident exemption.

The Hotel Room Rental Tax shall be imposed for Occupancy by Transients and not by Permanent Residents. A Patron becomes a Permanent Resident after a Patron has occupied a Room for thirty (30) consecutive days. The Patron's status as a Permanent resident continues until the Patron breaks the consecutive number of days. If the Patron breaks the consecutive number of days the Patron must complete another thirty (30) consecutive days to regain the Permanent Resident status.

E. EXCEPTIONS

1. Permanent Residents: A Permanent Resident, as that term is defined in the Ordinance, is excluded from Hotel Room Rental Tax in accordance with these Rules and Regulations.

2. State and Federal Employees: Occupancy of Rooms by the Government of the United States, or its agencies, or by an employee or representative of the Government of the United States, or its agencies, when such Occupancy is solely for official purposes and the Transaction is paid by the Government of the United States, or its agencies, are exempt from the Hotel Room Rental Tax. Occupancy of Rooms by the Commonwealth of Pennsylvania, or its agencies, or by an employee or representative of the Commonwealth of Pennsylvania, or its agencies, when such Occupancy is solely for official purposes and the transaction is paid by the Commonwealth of Pennsylvania, or its agencies, are exempt from the Hotel Room Rental Tax. Federal Credit Unions, Pennsylvania Credit Unions, Public Authorities created under the Municipal Authorities Act, Cooperative Agricultural Associations and Electric Cooperative Corporations ("Organizations") which are billed by the Operator and the Organization remits payment are exempt from the Hotel Room Rental Tax. However, employees of the Organizations that pay for the Transaction and are later reimbursed by the Organization are not exempt.

3. Charities: Occupancy of Rooms by Charities or by any employer representative of any such Charity, when such Occupancy is solely in furtherance of a charitable purpose of any such Charity, are exempt from the Hotel Room Rental Tax. To claim an exemption hereunder, a Charity shall furnish to the Operator a Declaration of Sales Tax Exemption issued by the Department of Revenue of the Commonwealth of Pennsylvania. The "Declaration Form" shall contain the Charity's exempt status number and indicate a usage which is nontaxable.

4. Records of Exempt Occupancies: The Operator shall maintain records to support and identify all exempt occupancies. The records shall include a form to be completed by the Permanent Resident, Federal employee or Organization and the Operator. The Operator shall also provide to the Treasurer a monthly statement itemizing all exemptions claimed.

F. REPORTS; RETURNS; PAYMENTS AND COLLECTION OF TAX

1. Collections from Patron: The Operator shall collect the Hotel Room Rental Tax imposed by the Ordinance from the Patron of the Room, and remit the same to the Treasurer. The Operator shall be liable to the County for the payment of the Hotel Room Rental Tax to the County as provided in the Ordinance.

2. Monthly Return by Operator: On or before the twenty-fifth (25th) day of each calendar month, the Operator shall submit to the Treasurer a return that shall contain the previous calendar month's information, together with the remittance of the Hotel Room Rental Tax due. The return shall include the amount of Consideration received for the Transactions during the month, the amount of Hotel Room Rental Tax collected by the Operator and any other information as the Treasurer may from time to time require.

3. Forms: Every report and return shall be made upon the official form furnished by the Treasurer. The Treasurer reserves the right to, from time to time, amend and/or modify any form. The Treasurer also reserves the right to develop any and all forms to effectuate and implement the Ordinance or these Rules and Regulations. Copies of the current forms can be found at http://www.co.berks.pa.us/Dept/Treasurer/Pages/HotelTax.aspx or are available upon request.

4. Payment to the Office of the County Treasurer. At the time of filing the returns, the Operator shall compute and timely and unconditionally remit to the Treasurer in immediately available funds the Hotel Room Rental Taxes collected by the Operator due to the County.

5. Penalty for Late Returns. If any return is filed more than 5 days after the due date thereof, a late payment penalty of $100.00 will be immediately assessed against the Operator.

6. Interest for Late Returns: If any amount of tax due is not remitted by the due date, interest at the rate of 1.5% shall be added for each month or fraction thereof during which the Hotel Room Rental Tax shall remain unpaid or not properly remitted in accordance with these Rules and Regulations.

G. FAILURE TO COLLECT AND REPORT TAX, DETERMINATION OF TAX BY COUNTY TREASURER, FAILURE TO REMIT TAX

1. Collection and Report: If any Operator shall fail to register with the Treasurer or shall fail or refuse to collect the Hotel Room Rental Tax under these Rules and Regulations or fails or refuses to produce any report or form required by the Rules and Regulations, the Treasurer shall proceed in such manner as the Treasurer shall deem proper to obtain facts and information on which to base the estimate of the Hotel Room Rental Tax due, together with any interest, costs and attorney's fees. As soon as the Treasurer has procured the facts and information as may be obtained, the Treasurer shall determine the amount of Hotel Room Rental Tax due and payable by the Operator, together with any interest, costs and attorney's fees (the "Determination").

The Treasurer shall give a notice of the Determination by personal service or by United States mail, postage prepaid, addressed to the Operator at the Operator's last known place of business. The Operator may, within ten (10) days after the service of the Determination, make application in writing to the Treasurer for a hearing on the amount assessed in the Determination.

If the Operator does not make such application within the time prescribed, the amount due under the Determination shall become final and conclusive and immediately become due and payable.

If the Operator does provide such application, the Treasurer shall give no less than five (5) days written notice to the Operator of a hearing to show cause why the Determination is improper. At such hearing, the Operator may appear and offer evidence why the Treasurer's Determination is improper. At the conclusion of the hearing, the Treasurer shall ascertain the proper Hotel Room Rental Tax due, together with any interest, costs and attorney's fees and shall provide written notice to the Operator of the total amount due (the "Assessment). The Assessment shall be payable within thirty (30) days unless an appeal is taken pursuant to these Rules and Regulations.

2. Failure to Remit: If an Operator fails to time remit the Hotel Room Rental Tax collected by the Operator to the Treasurer, the Treasurer shall provide at least ten (10) days written notice to the Operator of the tax, interest, cost and attorney's fees to be assessed on such untimely remittance. If the Operator fails to remit the collected Hotel Room Rental Tax, together with any interest, costs and attorney's fees within ten (10) days from such notice, the Treasurer or its designee shall proceed with the filing of any and all claims and/or action against the Operator in the Court of Common Pleas of Berks County. Except as otherwise provided by the Ordinance or these Rules and Regulations, the Operator shall be considered by the Treasurer to perform the duty of collection of the Hotel Room Rental Tax under the same fiduciary obligation as placed on local tax collectors under the Pennsylvania Local Tax Collection Law.

H. APPEAL

Any Operator aggrieved by any decision of the Treasurer with respect to the amount due for the Hotel Room Rental Tax, interest, costs and attorney's fees may appeal the decision of the Treasurer to the Court of Common Pleas of Berks County, pursuant to the applicable rules of the Pennsylvania Rules of Civil Procedure.

I. RECORDS

It is presumed that all Rooms are subject to the Hotel Room Rental Tax until the contrary is established by accurate records of the Operator. The burden of proving that the Transaction is not taxable is upon the Operator and Operator must demonstrate the same through accurate records. In any case, where an Operator fails to maintain adequate records as required under the Rules and Regulations, any Room for which there is not adequate records shall be deemed to be Occupied for the entire period for which the supporting records are lacking.

It shall be the duty of every Operator liable for the collection of the Hotel Room Rental Tax to keep and preserve for a period of three (3) years, all records as may be necessary to determine the amount of such tax which the Operator was liable to collect and pay to the County. The records shall be maintained at the place of business where the subject Rooms were rented. The records shall include but are not limited to folios, lease agreements; general ledgers, night auditor and housekeeper reports; traffic summaries; source of business reports; and any other documents that support Room revenues and exemptions. The records shall be filed in a manner that allows ready access by the Treasurer or the Treasurer's authorized agents, who shall have the right to inspect the records during regular business hours of the Operator and perform an audit thereon.

In all instances where an Operator claims an exemption to the Ordinance pursuant to Rules and Regulations, Section E, the Operator shall retain copies of identification cards of the Patron or other records indicating the exempt Patron's job number, employer, place of employment or other identifying information.

J. REFUNDS

Whenever the amount of Hotel Room Rental Tax, interest, costs or attorney's fees has been overpaid, paid more than once, or erroneously collected or received by the Treasurer under the Ordinance, the overpayment may be refunded to the Operator provided that a verified written claim is filed 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 or statutes.

K. ACTIONS TO COLLECT

Any Hotel Room Rental Tax collected by an Operator that has not been paid to the Treasurer shall be deemed a debt owed by the Operator to Berks County. Any Patron or Operator owing any monies to Berks County pursuant to the provisions of the Ordinance and these rules and Regulations shall be liable to Berks County for the same. Any action to collect brought under the Ordinance or these Rules and Regulations shall be brought by Berks County or Berks County's designee.

Any actions brought under the Ordinance or these Rules and Regulations by Berks County or Berks County's designee shall include the Hotel Room Rental Tax, any interest due under the Rules and Regulations, and any and all costs and attorney's fees associated with the collection thereof.

L. RIGHT TO PRIVACY

All report, returns and forms submitted to the Treasurer are subject to public disclosure under the Pennsylvania Right To Know Law. The Treasurer shall not disclose any confidential information which is protected by either state or federal statute, act or ordinance.

M. AMENDMENTS

The Treasurer reserves the right to, from time to time, without advance notice, amend these Rules and Regulations. Any amendments to the Rules and Regulations shall be made available to the Operators.