

## WARREN COUNTY OFFICE OF TREASURER

### **Warren County Occupancy Tax Law Informational Memorandum**

#### Housekeeping Cottages

This Memorandum is intended to answer questions that have been raised concerning the criteria the Warren County Treasurer will use to determine whether a person or business (1) operates housekeeping cottages subject to the Warren County Occupancy Tax Local Law No. 4 of 2003 or (2) is an operator of a facility with less than four housekeeping units not subject to taxation or (3) is a lessor of a facility which is similarly not subject to taxation.

#### I. Warren County additional 4% tax on rent for hotel/motel occupancy

Warren County Local Law No. 4 of 2003, known as the Warren County Occupancy Tax Law (hereinafter "Occupancy Tax Law"), provides as follows:

"On or after January 1, 2004, and in addition to any other tax previously authorized and imposed pursuant to Article 28 or 29 of the Tax Law or any other law, there is imposed and there shall be paid a tax of four percent (4%) upon the rent for every occupancy of a room or rooms in a hotel or motel located within the County, except that such tax shall not be imposed upon (a) a permanent resident of a hotel or motel or (b) housekeeping cottages having less than four (4) rentable units".

(The tax of four percent (4%) referred to above is hereinafter referred to as the "occupancy tax")

Under the Occupancy Tax Law, an operator and any officer of any corporate operation of a hotel or motel is made liable for the collection of and payment over to the County of the occupancy tax when the same is imposed on rent paid for an occupancy, as required under the law.

*A hotel or motel* is defined under the Occupancy Tax Law as:

"Any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as 'bed and breakfast', 'inn', 'housekeeping cottages with four or more units', and "tourist" facilities".

The *operator* is defined as " the owner of the hotel or motel room occupied or if the owner is not operating the motel or hotel and not being paid the rent or charge for the room occupied, then any other person entitled to be paid the rent or charge for the hotel or motel room occupied,

including but not limited to, the proprietor, lessee, sublessee, mortgagee in possession, licensee or other person otherwise operating such hotel or motel". *Occupancy* is defined as the "use of or possession, or the right to use or possession, of any room in a hotel or motel". *Occupant* is defined as a "person who, for a charge or any consideration, uses, possesses, or has the right to use or possess any room in a hotel or motel under any lease, concession, permit, right, license, agreement or otherwise". *Rooms* are defined as "any room or rooms of any kind in any part or portion of the hotel or motel which is available for, rented, or otherwise let out for the lodging of guests". Finally, *rent* is "the charge and/or the consideration received for occupancy, valued in money, whether received in money or otherwise".

## II. Operation of Housekeeping Cottages and Lease or rental of Non-Housekeeping Cottages or Bungalows

### A. Housekeeping Cottages.

The Occupancy Tax Law provides that, for taxing purposes, the definition of *hotel or motel* includes "housekeeping cottages with four or more units". It is recognized that a person or business could operate or offer for rent "housekeeping cottages", conventional hotel or motel rooms, "non-housekeeping cottages" or bungalows, some other type of accommodations or a combination of any of the foregoing. Based on the definition of "hotel or motel" under the law it would appear that lease or rental of "non-housekeeping cottages" or bungalows is not subject to the occupancy tax. Therefore, for purposes of administration of the law, this office will consider a "*housekeeping cottage*" to be a permanently constructed single family facility that may be a stand alone unit or attached to others (like townhouses) which includes a kitchen, bath, and sleeping area and which is part of a business enterprise whereby the same is offered by the owner or operator thereof for lodging on overnight basis with the provision of housekeeping services. "*Housekeeping services*" are considered to be centralized services provided for the convenience of guests on a routine basis such as maid, food or other common hotel services (for example: wake-up calls, Continental breakfasts, and concierge services) and other similar services such as entertainment or planned activities. "*Non-housekeeping cottages*" or *bungalows* will be considered facilities that do not offer these services.

### B. Rental for occupancy of Housekeeping Cottages subject to taxation.

The Occupancy Tax Law provides that housekeeping cottages with four or more units are included under the definition of hotel or motel, and therefore, rent for occupying individual housekeeping units is subject to the occupancy tax.

### C. Rental for occupancy of Housekeeping Cottages where operator operates less than four units not subject to taxation.

1. *Application of Occupancy Tax Law.* Where an operator operates a facility with less than four (4) housekeeping cottages (three (3) or less), the facility is not included in the

definition of hotel or motel, and therefore, the rent paid by persons occupying such facilities is not subject to the occupancy tax, regardless of length of stay or whether services similar to that of a hotel or motel are provided.

2. *Qualifying Facilities.* The exemption from taxation of housekeeping cottages with less than four (4) units applies only to housekeeping cottages and not bed and breakfast facilities, inns, tourist facilities or any other facility providing lodging on an overnight basis. Under this exemption, it is determined that in order to qualify as a housekeeping cottage the unit must be a separate stand alone unit or attached to others (like townhouses) providing an area with a stove, sink, refrigerator, bathroom, bedroom, living room, and limited to single family occupancy.

D. Rental for occupancy of Non-Housekeeping Cottages or Bungalows not subject to taxation.

A lessor of “non-housekeeping cottages” or “bungalows” will not be considered the operator of a hotel or motel and hence rent paid for occupancy of the same is not subject to the occupancy tax if all of the following criteria are met:

- 1) No centralized services are provided, including no maid, food or other common hotel services (for example: wake-up calls, Continental breakfasts, and concierge services) such as entertainment or planned activities. Providing a completely furnished cottage, including dishes, silverware, etc. and the furnishing of linens by the lessor without the service of changing the linens does not alter the nontaxable status; and
- 2) The required minimum rental of the facility is for at least one week at all times during the rental year; and
- 3) The name “housekeeping” does not appear in the advertised description of the cottages to be rented except that lessors may claim that lessor is leasing or renting exempt non-housekeeping cottage(s) or bungalow(s) by demonstrating: (1) compliance with all other criteria set forth in this section; (2) that the advertisements where the description “housekeeping” appears were contracted for prior to the effective date of the Warren County Occupancy Tax Law; (3) the word “housekeeping” is not included in any future advertisements; and (4) the word “housekeeping” does not appear on any billboards or other signs relating to the premises.

Examples:

- 1) ABC, Inc., rents cottages in Warren County and on the same property operates a 10 room hotel. ABC, Inc., offers the hotel rooms with all the

usual and expected amenities including daily maid service and wake-up calls. ABC, Inc offers the cottages fully furnished for minimum rental periods of one week any time during the year. The cottages are completely self-sustained living units, providing stove, sink, refrigerator, bathroom facilities, living room areas, and are limited to single family occupancy. With regard to the cottages, ABC, Inc., does not provide linens for its guests nor does it make arrangements for the guests to obtain the linens through another service. Rather, its guests may bring their own linens or arrange to acquire linens through a separate company unrelated to ABC, Inc. In promotional literature (including advertisements in magazines as well as on the sign appearing in front of the premises) ABC states that it has “cottages” and hotel rooms for rent. ABC, Inc., provides no other services, other than providing the cottage.

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In the instance described above, rent paid for use of the hotel rooms would be subject to the occupancy tax while the rent paid for use of the cottages would not be subject to the occupancy tax, and there would be no need to report rental of the cottages to the Warren County Treasurer.

- 2) XYZ, Inc., operates housekeeping cottages very similar to the ones described above, as operated by ABC, Inc. The only difference is that XYZ, Inc., provides fresh linens on arrival of their guests and once, during the week, changes the linens and provides maid services for the benefit of their guests.

In the above example, the rent paid for occupancy of the “cottage” would be subject to the occupancy tax. The changing of linens and the maid service are the distinguishing features.

- 3) Mr. and Mrs. X lease cottages located in Warren County. As with the cottages operated by ABC, Inc., Mr. and Mrs. X do not provide any of the usual hotel services. In advertising, Mr. and Mrs. X have referred to their units as “housekeeping cottages”.

In the above example, rent paid for occupancy of the cottages would be presumed to be subject to the occupancy tax. If, however, Mr. and Mrs. X can demonstrate that they are a lessor of exempt non-housekeeping cottages, in all respects, except for the advertisements that were contracted for prior to the effective date of the Occupancy Tax Law, the units will be considered non-housekeeping cottages or bungalows and the rent paid for occupancy thereof not subject to occupancy tax, provided that the use of the word “housekeeping” is not included in any future

advertisements and removed from any billboards or other signs relating to the premises.

- 4) Mr. and Mrs. W operate three stand alone housekeeping cottages in Warren County. Free Continental breakfasts are provided, and Mr. and Mrs. W provide maid services and two changes of linen during the course of a person's stay at the facility.

In the above example, the rent paid for use of the housekeeping cottages would be determined not to be subject to taxation under the Warren County Occupancy Tax Law, since each operator has less than four units.

- 5) DEF, Inc. operates 5 cottages and will, during slow times of the year, rent the cottages for a minimum of three (3) nights. Linens are provided.

In the above example, the rent paid for occupancy of the facilities is always subject to taxation as the facility will be considered as offering housekeeping cottages for rent that are of the nature intended to be taxed under the occupancy tax law. Offering rentals for less than a one week minimum at any time during the year subjects the cottage to the occupancy tax.

### III. Reservation of Rights/Redetermination

This informational memorandum sets forth the views of the Warren County Treasurer's Office at this time concerning determinations to be made in connection with cottages and housekeeping cottages. This informational memorandum is not the law but rather the determination of the Warren County Treasurer on how the law is to be administered. This informational memorandum is subject to revision and/or change in the future based on experience, additional information and/or future interpretations, provided through enactment of laws or decisions by Courts of Law. In the event this informational memorandum is changed, the same will be posted on the website and copies of any amendments to this informational memorandum will be sent to all reporting hotels or motels, in addition to the Tourism Department of Warren County and chambers of commerce identified by the Tourism Department and located in Warren County.