

Rio Arriba
Board of County Commissioners

COMMISSIONERS
Alfredo L. Montoya
Chairman, District 2

Elias Coriz
District 1

Felipe D. Martinez
District 3

COUNTY MANAGER
Tomas Campos, III

ORDINANCE NO. 2011-01

**AN ORDINANCE AMENDING ORDINANCE NO. 1999-03,
ESTABLISHING THE RIO ARRIBA COUNTY LODGERS' TAX
ORDINANCE**

WHEREAS, the Board of Commissioners of Rio Arriba County wish to amend Ordinance No. 1999-03, establishing the Rio Arriba County Lodgers' Tax; and

WHEREAS, upon adoption by the Board, Ordinance No. 2011-01 shall amend and replace Ordinance No. 1999-03; and

WHEREAS, the 1992 New Mexico Legislature amended the New Mexico Lodgers' Tax Act (Sections 3-38-13 through 3-38-24 NMSA 1978); and

WHEREAS, the Board of County Commissioners of Rio Arriba County meets the definition of county government and can therefore impose and collect an occupancy tax for revenues on lodging establishments within the County of Rio Arriba.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF RIO ARRIBA that the Lodgers' Tax Ordinance be established as follows:

- Section 1. **SHORT TITLE.** This ordinance shall be known as and may be cited as the "Lodgers' Tax Ordinance".
- Section 2. **DEFINITIONS.** As used in the Lodgers' Tax Ordinance, the following terms shall have the meanings indicated:
- A. "gross taxable rent" means the total amount of rent paid for lodging, not including the state gross receipts tax or local gross receipts or sales taxes;
 - B. "lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who in exchange for rent, uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at a taxable premises;



- C. "lodgings" means the room or other accommodations furnished by a vendor to a vendee by a taxable service of lodging;
- D. "occupancy tax" means the tax on lodging authorized by the Lodgers' Tax Ordinance;
- E. "person" means a corporation, firm or other body corporate, association or individual, and includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity, but does not include the United States of America, the State of New Mexico, any corporation, department instrumentality or agency of the federal government or the state government, or any political subdivision of the state;
- F. "rent" means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodgers' Tax Ordinance;
- G. "taxable premises" means a hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for lodging in Rio Arriba County outside the limits of any incorporated municipality;
- H. "vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and
- I. "vendor" means a person furnishing lodgings in the exercise of the taxable service of lodging.

Section 3. IMPOSITION OF TAX. There is hereby imposed an occupancy tax of five percent of gross taxable rent for lodging paid to vendors beginning on July 29, 2010 or upon notice of service to vendors.

Section 4. LICENSING.

- A. No vendor shall engage in the business of lodging who has not first obtained a vendor's license as provided in this section.
- B. Each applicant for a vendor's license shall submit an application to the County Clerk stating:
 - 1. The name, mailing address, and telephone number of the applicant, and the trade name or names, if different from the name of the applicant, under which the applicant proposes to engage in lodging. If an applicant has an email address and/or an existing promotional website for the lodging operation, the internet address for said

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website shall also be included in the application information.

2. A description of the applicant's lodgings, including location, number of rooms and the rate schedule.
 3. The applicant's New Mexico Taxation and Revenue Department Identification Number.
 4. If the applicant claims that his lodging activity is exempt from the occupancy tax under this ordinance, the basis for the applicant's claim of exemption.
 5. Other information reasonably necessary for the County Clerk to make a determination of eligibility for such license.
- C. The County Clerk shall review each application for a license and shall, within ten (10) days of receipt thereof:
1. Issue and mail or otherwise deliver the license if he/she finds that the applicant is or will be a vendor as defined in this ordinance and that the applicant has complied with the requirements of this ordinance, or
 2. Mail notice of a denial of the application for the license if he/she finds that the applicant had not complied with the requirements of this ordinance, or
 3. Mail or otherwise deliver written notice to the applicant that, based on the information provided by the applicant, the activities of the applicant are exempt from the occupancy tax and that the applicant therefore is not obligated to have a vendor's license. Such notice shall include the County Clerk's reasons for finding that the activities of the applicant are exempt from the occupancy tax.
- D. If the County Clerk denies an application for a vendor's license, he shall include in the notice of denial the reasons for the denial. Notice of the denial of an application shall be given by certified mail, return receipt requested, postage prepaid, addressed to the applicant at the address given on the application.
- E. An applicant whose application is denied may appeal the denial to the Board of County Commissioners by delivering written notice of such appeal to the County Clerk within fifteen (15) days of the date of the notice of the denial of the application. The matter shall be referred to the County Commission for hearing at a regular or special meeting in the usual course of business. The decision of the County Commission made thereof, shall be expressed in writing and shall be given by certified mail, return receipt request, postage prepaid. The action of the

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New Mexico



County Commission shall be final.

- F. If the County Commission finds for the applicant, the County Clerk shall issue the appropriate license or other notice conforming to the decision made by the Commission.

Section 5. EXEMPTIONS. The occupancy tax shall not apply:


A. If a vendee:

- 1. Has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days; or
 - 2. Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty (30) consecutive days.
- B. If the rent paid by a vendee is less than two dollars a day;
- C. To lodging accommodations at institutions of the federal government, the State of New Mexico, or any political subdivision thereof;
- D. To lodging accommodations at religious, charitable, educational, or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions;
- E. To clinics, hospitals or other medical facilities;
- F. To privately owned and operated convalescent homes or homes for the aged, infirm, indigent, or chronically ill; or
- G. If the vendor does not offer at least three rooms within or attached to a taxable premises or at least three other premises for lodging or a combination of these within the taxing jurisdiction.

Section 6. REPORTING AND COLLECTION OF TAX.

- A. Every vendor shall collect the proceeds of the occupancy tax on behalf of the County and shall act as a trustee thereafter.
- B. The occupancy tax shall be collected from vendees in accordance with this ordinance and shall be charged separately from the rent fixed by the vendor for the lodgings.
- C. On and after April 21, 1999 each vendor licensed under this ordinance shall be liable to the County for the occupancy tax.
- D. Each vendor shall file a report to the County Clerk by the twenty-fifth day of each calendar month on forms provided by the County Clerk of the receipts for lodging paid to him/her in the preceding calendar month, and

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shall remit therewith payment of the proceeds of the occupancy tax due the County. The report shall include sufficient information to enable the County to audit the report and shall be verified by oath by the vendor.

- Section 7. **DUTY OF VENDOR.** Each vendor shall maintain adequate records of his provision of lodgings and of rent received for the use thereof. Such records shall be maintained within Rio Arriba County, shall be open to the inspection of the County during reasonable hours, and shall be retained for a minimum of seven (7) years from the date of their creation.
- Section 8. **AUDITS.** The County Commission shall annually select, at random, one or more vendors to be audited to verify the amount of gross taxable rent subject to the occupancy tax and to ensure that the full amount of occupancy tax is collected. In addition, the County may conduct an audit of any vendor at any time. A copy of each audit shall be filed annually with the Local Government Division of the New Mexico Department of Finance and Administration.
- Section 9. **CIVIL PENALTIES, LIENS AND SALES BY CREDITORS.**
- A. If, for a given month, a vendor fails to file a monthly report, or fails to pay the occupancy tax then due for that month, all as required by this ordinance, he shall be liable for the tax due for that month and a penalty equal to ten percent of the tax due or \$100, whichever is greater, without notice from the County with regard thereto.
 - B. Upon such failure of a vendor to file a report or to pay tax, the County Clerk shall promptly give the vendor written notice of his/her delinquency and of the penalty provided in this Section, which notice shall be served personally or by certified mail, return receipt requested. If the report that is due is not filed and the tax and penalty that is due is not paid within fifteen days of receipt of such notice by the vendor, the County Clerk shall bring an action in New Mexico District Court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate not exceeding one percent (1%) a month, the costs of collection and reasonable attorney's fees incurred in connection therewith.
 - C. The occupancy tax shall constitute a lien in favor of the County upon the personal and real property of each vendor providing lodgings in the County. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978, as amended. Priority of the lien shall be determined from the date of filing. The County Clerk shall furnish a certificate, showing the amount of all liens in the records of the County against a vendor pursuant to Chapter 3, Article 38 NMSA 1978, as amended, to any person requesting such a certificate.
 - D. No person shall sell the property of any vendor under process or order of court without first ascertaining from the County Clerk the amount of any occupancy tax due the County from the vendor. Any occupancy tax so due



shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

Section 10. **CONFIDENTIALITY OF RETURN.** It shall be unlawful for any employee of the Rio Arriba County Clerk's Office to reveal to any individual other than another employee of the Clerk or the State Bureau of Revenue any information contained in the return of any taxpayer, except (1) to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the County is a party and in which the information sought is material to the inquiry; (2) to the taxpayer himself or to his authorized representative; or (3) for statistical purposes, in such manner that the information revealed is not identified as applicable to any individual taxpayer.

Section 11. **CRIMINAL PENALTIES.** Any person who violates the provisions of this ordinance by failure to pay the occupancy tax, to remit the proceeds thereof to the County, or to account properly for any lodging and the tax proceeds pertaining thereto, shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$300 or imprisonment for not more than ninety (90) days or both. For purposes of this section, each failure to file a monthly report or to remit the occupancy tax proceeds due for a month shall constitute a separate violation.

Section 12. **REFUND AND CREDITS.** If any person believes that he has made payment of any occupancy tax in excess of that for which he was liable, he may claim a refund thereof by delivering to the County Clerk, not later than ninety days from the date payment was made, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The County Clerk may allow the claim in whole or in part or may deny it. Refunds of tax erroneously paid and amounting to \$100 or more may be made only with the written approval of the County Commission.

Section 13. **SEVERABILITY.** If any provision of this ordinance is held to be unenforceable, such provision shall be deemed void only to the extent of such unenforceability, and shall be deemed separate from and shall not invalidate any other provision of this ordinance.

Section 14. **EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after its adoption by the County Commission.

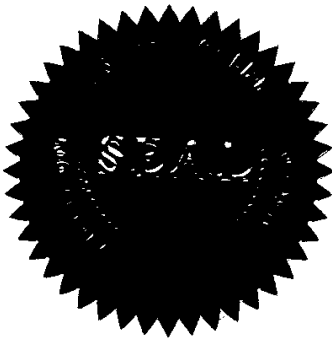


Section 15. SAVINGS FUND. One third (1/3) of the net proceeds of the tax collected pursuant to this ordinance shall be placed in a separate fund of the County, to be known as the "Rio Arriba County Lodgers' Tax Savings Fund" and the principal and interest of said fund shall be retained in such fund for future uses as authorized by the Lodgers' Tax Act and as to specified by a future ordinance of the County. Net proceeds shall not include penalties or interest paid by vendors and shall be that amount available for the fund after refunds and credits and extraordinary costs of administering or collecting the occupancy tax

Section 16. DELAYED REPEAL ORDINANCE NUMBER 1999-03.

PASSED, ADOPTED AND APPROVED BY THE GOVERNING BODY OF RIO ARRIBA COUNTY THIS 29th DAY OF JULY, 2010.

**BOARD OF COUNTY COMMISSIONERS
RIO ARRIBA COUNTY, NEW MEXICO**



Alfredo L. Montoya
Alfredo L. Montoya, Chairman
Commissioner, District II

Elias Coriz
Commissioner, District I
Felipe D. Martinez
Felipe D. Martinez
Commissioner, District III

ATTEST: *Moises A. Morales, Jr.*
Moises A. Morales, Jr., County Clerk

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