



ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER A17

ACCOMMODATION TAX ACT

Showing the Law as at 15 December 2010

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 9/2010, in force 1 November 2010

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ACCOMMODATION TAX ACT

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ACCOMMODATION TAX ACT**Interpretation**

1. (1) In this Act—

“accommodation” means—

- (a) guest accommodation; or
- (b) rental accommodation;

“Act” includes a provision of an Act and a regulation or provision of a regulation made under this Act;

“assess” includes reassess;

“establishment”, in relation to guest accommodation, means each location where lodging is provided;

“guest accommodation” means lodging provided for a consideration in a hotel, resort, villa, guest house, lodging house, bed and breakfast or other similar establishment but does not include—

- (a) lodging provided in a senior citizen’s home, nursing home, hospital or other similar establishment;
- (b) lodging provided to an employee by an employer who—
 - (i) employs the employee, and
 - (ii) is not in the business of selling lodging,in a work camp that is owned by the employer or managed by or on behalf of the employer;
- (c) lodging provided to an independent contractor by a person who—
 - (i) engages the services of the independent contractor, and
 - (ii) is not in the business of selling lodging,in a work camp that is owned by the person or managed by or on behalf of the person;
- (d) lodging purchased by a person who is ordinarily resident in Anguilla and occupied by the person and any member of the person’s family;
- (e) lodging occupied by a person who is employed as a public officer or engaged as an independent contractor by the Government and any member of the person’s family;
- (f) lodging occupied by a person travelling in Anguilla on a diplomatic passport;

- (g) lodging after it has been occupied continuously by a person alone or together with other persons for a period of at least 180 days so long as it continues to be so occupied;
- (h) lodging occupied by a person who produces an exemption certificate issued by the Minister under the regulations in relation to his or her period of occupation; or
- (i) lodging occupied by a person or class of persons exempted under the regulations;

“landlord” means a person who lets rental accommodation or offers to let it, on his or her own behalf or through an agent;

“operator” means a person who sells guest accommodation in Anguilla or offers it for sale, on his or her own behalf or through an agent;;

“premises” means an apartment, house, villa or other similar place, or any part thereof;

“prescribed” means prescribed by regulation under section 26(1)(a);

“purchase price” means the consideration that is given for guest accommodation, except that—

- (a) if the guest accommodation provided consists of lodging together with one or more meals, transportation or other goods or services, the purchase price is the consideration that is reasonably attributable to the lodging alone as determined under the regulations; and
- (b) if any portion of the consideration given for guest accommodation is in money’s worth, the purchase price is the price—
 - (i) of similar accommodation purchased or available for purchase by another person from the same operator on the day or days the accommodation is occupied, or
 - (ii) that is, in the Comptroller’s opinion, reasonably attributable to the accommodation;

“purchaser” means a person who purchases guest accommodation—

- (a) for the purchaser’s own use; or
- (b) for use by another person;

“rent” means the consideration that is given for rental accommodation, except that, if any portion of the consideration given for rental accommodation is in money’s worth, the rent is the fair market value of the rental accommodation based on previous rentals or the rentals of comparable properties;

“rental accommodation” means premises let for consideration and used or intended to be used as a dwelling but does not include—

- (a) residential premises provided in a senior citizen’s home, nursing home, hospital or other similar facility;

- (b) residential premises provided to an employee by an employer who—
 - (i) employs the employee, and
 - (ii) is not in the business of selling lodging,
in a work camp that is owned by the employer or managed by or on behalf of the employer;
- (c) residential premises provided to an independent contractor by a person who—
 - (i) engages the services of the independent contractor, and
 - (ii) is not in the business of renting residential premises,
in a work camp that is owned by the person or managed by or on behalf of the person;
- (d) residential premises let to a person who is ordinarily resident in Anguilla and occupied by the person and any member of the person's family;
- (e) residential premises occupied by a person who is employed as a public officer or engaged as an independent contractor by the Government and any member of that person's family;
- (f) residential premises occupied by a person travelling in Anguilla on a diplomatic passport;
- (g) residential premises after they have been occupied continuously by a tenant alone or together with other persons for a period of at least 180 days so long as they continue to be so occupied;
- (h) residential premises occupied, or intended to be occupied, solely by a person providing services to the tenant under a contract for service that includes the provision of the accommodation;
- (i) residential premises occupied by a person who produces an exemption certificate issued by the Minister under the regulations in relation to his or her period of occupation; or
- (j) residential premises occupied by a person or class of persons exempted under the regulations;

“tenant” means a person who rents rental accommodation—

- (a) for the tenant's own use; or
- (b) for use by another person.

(2) Section 6(d) of the Interpretation and General Clauses Act does not apply to computing time under this Act.

(3) This Act shall be read together with the applicable provisions of the Inland Revenue Department Act as if they constituted a single Act.

(4) For greater certainty, except where this Act provides otherwise, when a notice or document is to be served on a person under this Act, it shall be served on that person in accordance with section 34 of the Inland Revenue Department Act.

Registration of guest accommodation and rental accommodation required

2. (1) No person shall sell, offer for sale or otherwise provide guest accommodation or let, offer to let or otherwise provide rental accommodation in Anguilla, whether on his or her own behalf or through an agent, for a consideration unless the person is—

(a) registered under this section; and

(b) complies with the terms and conditions of the registration.

(2) A person who—

(a) sells, offers for sale or otherwise provides guest accommodation in relation to more than one establishment; or

(b) lets, offers to let or otherwise provides rental accommodation in relation to premises at more than one location;

shall be registered in relation to each establishment or premises.

(3) An application for registration shall be made in accordance with the regulations.

(4) The Comptroller may refuse to register a person or may suspend or cancel a person's registration in relation to a guest accommodation establishment or rental accommodation premises when, in the opinion of the Comptroller, the person has contravened this Act or the Inland Revenue Department Act in relation to the guest accommodation establishment or rental accommodation premises.

(5) If the Comptroller refuses to register a person or suspends or cancels a person's registration, the Comptroller shall serve on the person a written notice of refusal, suspension or cancellation specifying the reason for the refusal, suspension or cancellation.

(6) No person whose registration has been suspended or cancelled shall sell, offer for sale or otherwise provide guest accommodation in the establishment to which the registration relates until the suspension has ended or the registration has been reinstated.

(7) No person whose registration has been suspended or cancelled shall let, or offer to let or otherwise provide rental accommodation in premises to which the registration relates until the suspension has ended or the registration has been reinstated, but nothing affects the tenancy or the right of a tenant to remain in possession of the premises until the termination of the lease or rental agreement respecting the premises.

Register of guest accommodation establishments and rental accommodation premises

3. The Comptroller shall keep an accurate and up-to-date register of guest accommodation establishments and rental accommodation premises, which shall contain the prescribed information.

Accommodation tax on purchaser or tenant and collection by operator or landlord

4. (1) A purchaser of guest accommodation shall pay accommodation tax to the Comptroller at the rate of 10% of the purchase price of the guest accommodation.

(2) A tenant of rental accommodation shall pay accommodation tax to the Comptroller at the rate of 10% of the rent for the rental accommodation.

(3) An operator shall, as an agent of the Comptroller for the collection of accommodation tax, collect the accommodation tax payable under subsection (1) from a purchaser of guest accommodation when the purchase is made.

(4) A landlord of rental accommodation shall, as an agent of the Comptroller for the collection of accommodation tax, collect the accommodation tax payable under subsection (2) from the tenant of the rental accommodation when the rent is paid.

(5) For the purposes of this Act, if an operator does not collect accommodation tax under subsection (3), the operator is nevertheless deemed to have collected the accommodation tax.

(6) For the purposes of this Act, if a landlord does not collect accommodation tax under subsection (4), the landlord is nevertheless deemed to have collected the accommodation tax.

(7) Accommodation tax is payable under this Act in relation to guest accommodation or rental accommodation whether or not the operator or landlord is registered under section 2.

Filing returns and remitting accommodation tax

5. (1) An operator or landlord who is liable to collect accommodation tax under section 4(3) or (4), or is deemed to have collected accommodation tax under section 4(5) or (6), shall, not later than 20 days after the end of each month—

(a) file a return for each guest accommodation establishment or rental accommodation premises in relation to accommodation tax for the previous month in the form and manner and containing the information prescribed or, if no regulation is made prescribing the foregoing, then in the form and manner and containing the information specified by the Comptroller; and

(b) remit to the Comptroller the accommodation tax collected or deemed to have been collected during the previous month.

(2) A return is required to be filed by an operator or landlord whether or not—

(a) any guest accommodation was sold by the operator; or

(b) any rental accommodation was let by the landlord;

during the previous month.

Refund to purchaser or tenant of overpayment of accommodation tax

6. (1) An operator or landlord who has collected accommodation tax from a purchaser or tenant in an amount greater than required under section 4(1) or (2) shall, on written notice by the Comptroller served on the operator or landlord, refund the overpayment to the purchaser or tenant within the time specified in the notice.

(2) An operator or landlord who refunds an overpayment of accommodation tax under subsection (1) that the operator or landlord has previously remitted to the Comptroller may deduct the amount of the refunded overpayment from the next remittance of accommodation tax that is payable to the Comptroller under section 5.

(3) If an operator or landlord fails or refuses to refund an overpayment of accommodation tax to a purchaser or tenant under subsection (1)—

- (a) the Comptroller may refund the overpayment to the purchaser or tenant; and
- (b) if the operator or landlord has not previously remitted to the Comptroller the amount of the overpayment, the overpayment is deemed to be accommodation tax and the Comptroller may assess the operator or landlord for the amount of the overpayment in accordance with section 7 as if the amount of the overpayment were accommodation tax.

(4) Section 13 does not apply to an overpayment of accommodation tax.

(5) This section applies, with appropriate modifications, to the refund of accommodation tax to a purchaser in relation to guest accommodation or a tenant in relation to rental accommodation that has been occupied continuously by the purchaser or a person for whose use the guest accommodation was purchased or by the tenant alone or together with other persons for at least 180 days.

Assessment of accommodation tax

7. (1) The Comptroller may—

- (a) assess any accommodation tax payable by a purchaser or tenant under this Act within 4 years from the day on which the accommodation tax became payable; and
- (b) assess interest and penalties in addition to the accommodation tax payable.

(2) The Comptroller may—

- (a) assess any accommodation tax required to be remitted by an operator or landlord under this Act within 4 years from the day on which the tax was required to be remitted; and
- (b) assess interest and penalties in addition to the accommodation tax required to be remitted.

(3) Notwithstanding subsections (1) and (2), if a purchaser or tenant or an operator or landlord—

- (a) has made any misrepresentation that is attributable to neglect, carelessness or wilful default;
- (b) has committed a fraud in making a return or in furnishing any information under this Act or the Inland Revenue Department Act in relation to accommodation tax; or
- (c) has failed to disclose any relevant information;

the Comptroller may assess any accommodation tax payable or required to be remitted and assess interest and penalties at any time the Comptroller considers reasonable.

(4) Liability to pay or remit accommodation tax imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(5) The Comptroller is not bound by a return filed or information furnished by or on behalf of any person under this Act or the Inland Revenue Department Act in relation to accommodation tax and may, notwithstanding a return filed or information so furnished, or if no return has been filed or information has been furnished, assess the accommodation tax payable under this Act.

Late filing penalty

8. If an operator or landlord fails to file a return as and when required under this Act, the Comptroller may assess against the person a penalty of \$50 for each day of default to a maximum of \$2,000.

Effect of assessment

9. (1) Unless it is varied or vacated on an objection or appeal—

- (a) an assessment under section 6, 7, 8, 12 or 13 is deemed to be valid and binding notwithstanding any error, defect or omission in it or in any proceeding under this Act relating to it; and
- (b) the amount assessed in an assessment under section 6, 7, 8, 12 or 13 is, for the purposes of collection and recovery, deemed to be an amount owing under this Act and to be conclusively established as a debt due to the Crown.

(2) Every person assessed under section 6, 7, 8, 12 or 13 shall, within 15 days after service of the notice of assessment, pay the amount assessed against the person whether or not an objection to or appeal from the assessment is pending.

Notice of assessment

10. The Comptroller shall serve or cause to be served a notice of an assessment under this Act on the person assessed.

Onus of proof

11. The onus of disproving an assessment under this Act is on the person assessed.

Penalty in addition to amount owing**12.** (1) When—

- (a) a person owes an amount to the Crown under this Act; and
- (b) the Comptroller is of the opinion that the reason that the amount is owing to the Crown by that person is attributable to neglect, carelessness, wilful default, fraud or evasion by or on behalf of that person;

the Comptroller may determine the amount owing by that person and assess against the person a penalty in the amount of 25% of the amount owing.

(2) On assessing a penalty under subsection (1), the Comptroller may demand payment of the amount owing and the amount of the penalty from the person to whom the demand is directed.

(3) Evidence that a demand has been made under subsection (2) is proof, in the absence of evidence to the contrary, that the unpaid amount and the penalty assessed under this section are owing to the Crown from the person to whom the demand is directed in the amount stated in the demand.

Penalty in addition to overpayment**13.** When an operator or landlord—

- (a) has collected from a purchaser or tenant accommodation tax in an amount greater than required; and
- (b) fails or refuses to refund the overpayment to the purchaser or tenant in accordance with section 6;

the Comptroller may assess against the operator or landlord a penalty that is equal to the amount of the overpayment, to a maximum of \$1,000.

Notice of objection

14. The following persons may, in accordance with section 26 of the Inland Revenue Department Act, object to the following actions or decisions of the Comptroller—

- (a) an operator or landlord may object to a notice of refusal, suspension or cancellation of registration under section 2;
- (b) a person to whom an assessment by the Comptroller under section 6, 7, 8, 12 or 13 is directed may object to the assessment.

Registers and records

15. (1) Every operator shall, for each of his or her guest accommodation establishments, keep—

- (a) an up-to-date and accurate register of occupancy in the manner and containing the information prescribed; and
- (b) such other records as may be prescribed.

- (2) Every landlord shall, for each of his or her rental accommodation premises, keep—
- (a) an up-to-date and accurate register of occupancy in the manner and containing the information prescribed; and
 - (b) such other records as may be prescribed.

Hindering officer

16. No person shall hinder, molest or interfere with any compliance officer or assistant doing anything that the compliance officer or assistant is authorized by or pursuant to section 21, 22 or 24 of the Inland Revenue Department Act to do in relation to the administration and enforcement of this Act or prevent or attempt to prevent any compliance officer or assistant doing that thing and, notwithstanding any other law to the contrary, a person shall, unless the person is unable to do so, do everything that the person is required by or pursuant to section 21, 22 or 24 to do.

Offence re documents and records

- 17.** Any person who—
- (a) makes, participates in, assents to or acquiesces in the making of false or deceptive statements in an application, return, statement, record or other document delivered or made under this Act or under the Inland Revenue Department Act in relation to accommodation tax;
 - (b) destroys, alters, mutilates or disposes of the records of a person required to keep records under this Act or under the Inland Revenue Department Act in relation to accommodation tax;
 - (c) makes or assents to, or acquiesces in the making of false or deceptive entries in, or omits or assents to or acquiesces in omitting a material particular from, any record referred to in paragraph (b);
 - (d) wilfully evades or attempts to evade compliance with this Act or the Inland Revenue Department Act in relation to a matter under this Act; or
 - (e) conspires with any person to commit an offence described in paragraphs (a) to (d);

is guilty of an offence and, in addition to any other punishment provided by this Act, is liable on summary conviction to a fine of 300% of the accommodation tax sought to be evaded or to imprisonment for a term of 2 years or to both.

Failure to file return

18. A person who fails to file a return as and when required by this Act or to provide or produce information or a document as and when required by the Inland Revenue Department Act in relation to accommodation tax is guilty of an offence and liable on summary conviction to a fine of \$100 for each day of default.

Failure to pay or remit accommodation tax

19. A person who contravenes section 4 or 5(1)(b) is guilty of an offence and, in addition to any other punishment provided by this Act, is liable on summary conviction to a fine of 300% of the accommodation tax required to be paid, collected or remitted under section 4 or 5(1)(b).

Actions by corporate agent

20. A corporation is guilty of an offence if a person acting or purporting to act on its behalf—

- (a) knowingly; or
- (b) under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act;

makes or participates in, or assents to or acquiesces in, the making of a false statement or omission in a return, application, statement or answer filed or made as required by or under this Act or by or under the Inland Revenue Department Act in relation to accommodation tax, as a result of which the accommodation tax or refund that would have been payable by or to the corporation, if the accommodation tax or refund had been assessed or determined on the basis of the information provided in the return, application, statement or answer, is less or more, as the case may be, than the accommodation tax or refund payable by or to the corporation.

Offences and punishments re corporation

21. (1) A corporation that wilfully evades or attempts to evade payment of accommodation tax payable by it is guilty of an offence.

(2) A corporation that wilfully claims or attempts to claim a refund greater than that to which it is entitled is guilty of an offence.

(3) Where a corporation is guilty of an offence under subsection (1), it is liable on summary conviction to a fine of 300% of the amount of accommodation tax sought to be evaded.

(4) Where a corporation is guilty of an offence under subsection (2), it is liable on summary conviction to a fine of 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which it is entitled.

Offences and punishments re individual

22. (1) An individual is guilty of an offence who—

- (a) makes or participates in, assents to or acquiesces in the making of false or deceptive statements in a return, application, statement or answer filed or made as required by or under this Act or the Inland Revenue Department Act in relation to accommodation tax;
- (b) destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation;
- (c) makes or assents to or acquiesces in the making of false or deceptive entries or omits or assents to or acquiesces in omitting to enter a material particular in records or books of account of a corporation;

(d) wilfully in any manner evades or attempts to evade compliance with this Act or the Inland Revenue Department Act in relation to a matter under this Act or payment of accommodation tax imposed by this Act; or

(e) conspires with any person to commit an offence described in paragraphs (a) to (d);

and in so doing enables or assists or attempts to enable or assist, or causes or could cause, a corporation to evade or attempt to evade payment of accommodation tax payable by it or to claim or attempt to claim a refund greater than that to which it is entitled.

(2) When an individual is guilty of an offence under subsection (1) in relation to a corporation that evades or attempts to evade payment of airline ticket tax payable by it, that individual is liable on summary conviction—

(a) to a fine of 300% of the amount of the accommodation tax sought to be evaded; or

(b) to a fine referred to in paragraph (a) and to imprisonment for a term of 2 years.

(3) When an individual is guilty of an offence under subsection (1) in relation to a corporation that claims or attempts to claim a refund greater than that to which it is entitled, that individual is liable on summary conviction—

(a) to a fine of 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which the corporation is entitled; or

(b) to a fine referred to in paragraph (a) and to imprisonment for a term of 2 years.

Offences and punishments re officers, directors, etc.

23. If a corporation is guilty of an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable on summary conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

General punishment

24. A person who contravenes a provision of this Act or the Inland Revenue Department Act in relation to a matter under this Act for which a punishment is not otherwise provided is guilty of an offence and liable on summary conviction—

(a) for a first offence, to a fine of \$1,000;

(b) for a second offence, to a fine of \$2,500; and

(c) for a third or subsequent offence, to a fine \$5,000.

Limitation period

25. A prosecution for an offence under this Act may be commenced within 4 years from the date of the contravention but not afterwards.

Regulations

26. (1) The Minister may make regulations for the better administration of this Act including regulations—

- (a) prescribing anything under this Act that may be prescribed;
- (b) respecting the persons or classes of person in relation to whom the Minister may issue exemption certificates for the purposes of paragraph (h) of the definition of “guest accommodation” or paragraph (i) of the definition of “rental accommodation” in section 1 and the form and manner of issuance of those certificates;
- (c) respecting the exemption of a person or class of persons for the purpose of paragraph (i) of the definition of “guest accommodation” or paragraph (j) of the definition of “rental accommodation” in section 1;
- (d) respecting the registration of guest accommodation establishments and rental accommodation premises and providing for all aspects of the application for registration or amendment of registration, or refusal of or issuance of registration or amendment of registration, and suspension or cancellation of a registration, including—
 - (i) imposing terms and conditions,
 - (ii) prohibiting or regulating transfer, and
 - (iii) the display of, and property in, a certificate of registration;
- (e) respecting the collection and remittance of accommodation tax under this Act;
- (f) respecting how and by whom the amount properly attributable to guest accommodation is to be determined, generally or in a particular case, when the amount paid by a purchaser of guest accommodation to an operator—
 - (i) includes any amount other than for guest accommodation, or
 - (ii) is an amount in respect of a service or other thing that may be regarded as attributable to guest accommodation;
- (g) respecting how and by whom the amount properly attributable to guest accommodation is to be determined, generally or in a particular case, when the amount paid by a tenant for rental accommodation to a landlord—
 - (i) includes any amount other than for rental accommodation, or
 - (ii) is an amount in respect of a service or other thing that may be regarded as attributable to rental accommodation;
- (h) respecting the duties of operators and landlords in relation to the collection of accommodation tax under this Act;

- (i) respecting returns to be made to the Comptroller including the person required to make them;
 - (j) providing that, notwithstanding section 18 of the Financial Administration and Audit Act, the Comptroller is not required to collect or refund accommodation tax an amount that is less than a specified amount and that the right to collect such an amount is extinguished and determining when a refund is required to be requested or what records are to be made of amounts not collected or amounts not refunded;
 - (k) requiring receipts on pre-printed receipt forms provided by the Comptroller to be furnished to purchasers or occupiers of guest accommodation or to tenants of rental accommodation by operators and landlords for accommodation tax paid and generally respecting such receipts including—
 - (i) when they are required to be given,
 - (ii) their retention and safeguarding; and
 - (iii) the provision of pre-printed receipt books, including their retention, safeguarding and return to the Comptroller;
 - (l) defining any term used but not defined in this Act.
- (2) A regulation made under paragraph (1)(k) may provide that a receipt may be combined with a receipt required by regulation under section 24(1)(i) of the Tourism Levy Act.
- (3) A regulation may provide that a contravention of any of its provisions is an offence.

Citation

27. This Act may be cited as the Accommodation Tax Act, Statutes and Regulations of Anguilla, Chapter A17.

Transitional provisions

28. (1) In this section, “former Act” means the Accommodation Tax Act, R.S.A. c. A16.

(2) A person who, on 1 November 2010, was registered as the proprietor of a hotel under the former Act is deemed to be registered as an operator of guest accommodation under this Act, but shall, within 30 days after 1 November 2010, file an update of the registration information in the form and manner and containing the information required under the regulations.

(3) A person who, on 1 November 2010, was registered as the owner of rented accommodation under the former Act is deemed to be registered as a landlord of rental accommodation under this Act, but shall, within 30 days after 1 November 2010, file an update of the registration information in the form and manner and containing the information required under the regulations.

(4) Notwithstanding anything in this Act, when a person who was not required to pay accommodation tax under the former Act continues in occupation of the accommodation after 1 November 2010, the person is not required to pay accommodation tax under this Act in relation to the accommodation, so long as his or her occupancy continues.

Transitional regulations

29. The Minister may, in the one year period after 1 November 2010, make such transitional regulations as he or she considers appropriate and may make them retroactive to 1 November 2010.
