

ORDINANCE NO. 4633

AN ORDINANCE to repeal Article T (DAILY RENTAL TAX) of Chapter 2 (TAXATION) of Title 3 (FINANCE, TAXATION AND PROCUREMENT) and to adopt and reordain Article T (SHORT-TERM RENTAL TAX) of Chapter 2 (TAXATION) of Title 3 (FINANCE, TAXATION AND PROCUREMENT) of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article T, Chapter 2, Title 3 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, repealed in its entirety, and the daily rental tax therein established is abolished.

Section 2. That Chapter 2, Title 3 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, adopted and reordained by adding thereto revised Article T, to read as follows:

Sec. 3-2-356 Definitions.

The following words, phrases and terms shall for the purposes of this article, have these meanings:

(a) Affiliated means a person that is an officer, director, partner, member, shareholder, parent or subsidiary of the lessee or if a person and the lessee have any common ownership interest in excess of 5 percent. Any rental to a person affiliated with the lessee shall be treated as rental receipts but shall not qualify for purposes of the 80 percent requirement of subsection (f)(1) below or the 60 percent requirement of subsection (f)(2) below.

(b) Certificate of registration means the annual certificate issued pursuant to section 3-2-359 to persons engaged in a short-term rental business.

(c) Director means the director of finance or a designee duly authorized to act for the director.

(d) Gross proceeds means the total amount charged to persons, including penalties, late charges and interest, for the rental of short-term rental property by a short-term rental business, excluding any state and local sales taxes paid pursuant to chapter 6 of title 58.1 of the Code of Virginia (1950), as amended.

(e) Gross rental receipts means the total amount charged to persons, including penalties, late charges and interest for the rental of short-term rental property by a short-term rental business, less the portion of such amount which is for the retention of personal services for the operation, but not the delivery or installation of the property.

(f) A person is engaged in the short-term rental business if:

(1) Not less than 80 percent of the gross rental receipts of such business during the preceding year arose from transactions involving the rental of short-term rental property, other than heavy equipment as defined in subsection (2) below, for periods of 92 consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessee; or

(2) Not less than 60 percent of the gross rental receipts of such business during the preceding year arose from transactions involving the rental of heavy equipment property for periods of 270 consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessee. For purposes of this article “heavy equipment property” means rental property of an industry that is described under code 532412 or 532490 of the 2002 North American Industry Classification System as published by the United States Census Bureau, excluding office furniture, office equipment and programmable computer equipment and peripherals as defined in section 58.1-3503(A)(16) of the Code of Virginia (1950), as amended.

(g) Short-term rental property means all tangible personal property held for rental and owned by a person engaged in a short-term rental business, except trailers as defined in section 46.2-100 of the Code of Virginia (1950), as amended, and other tangible personal property required to be licensed or registered with the Virginia Department of Motor Vehicles, the Virginia Department of Game and Inland Fisheries or the Virginia Department of Aviation.

Sec. 3-2-357 Levy and rate of short-term rental tax.

(a) In addition to all other taxes of every kind now or hereinafter imposed by law, for tax year 2009 and each year thereafter, there is hereby levied and imposed:

(1) on every person engaged in a short-term rental business as defined in 3-2-356(f)(1) a short-term rental tax of one percent on the gross proceeds of such business; and

(2) on every person engaged in a short-term rental business as defined in 3-2-356(f)(2) a short-term rental tax of one-and-one-half percent on the gross proceed of such business.

(b) This tax shall be levied in addition to the sales tax levied under 3-2-91 of this code.

(c) The imposition and collection of a short-term rental tax pursuant to this article with respect to rental property shall be in lieu of taxation of such rental property as tangible business personal property in the same tax year.

(d) Except for daily rental vehicles, rental property shall be classified, assessed and taxed as tangible personal property if such property:

(1) is owned and rented by a person not engaged in the short-term rental business as defined in 3-2-356(f); or

(2) has acquired situs in the Commonwealth of Virginia and is owned and rented by a person who does not collect and remit to the city a short-term rental tax with respect to the rental of such property.

Sec. 3-2-358 Application for certificate of registration.

(a) Every person engaging in a short-term rental business shall annually file with the director an application for a certificate of registration. The application shall be filed by January 31 of each year or within 30 days of the start of a short-term rental business. The application shall be on a form prescribed by the director and shall contain:

(1) the name under which the applicant operates or intends to operate the business;

(2) each location in the city from which the business is to be conducted, as well as the location of the short-term rental business headquarters;

(3) the subsection of 3-2-356(f) under which the applicant asserts that it is qualified for certification as a short-term rental business;

(4) a statement of the total gross receipts, as that term is defined in section 9-1-2 of this code, the total gross proceeds and the total gross rental receipts of the business for the immediately preceding calendar year;

(5) a statement of the portion of the business' gross proceeds for the immediately prior year for which no short-term rental tax was assessable pursuant to section 3-2-357 or 3-2-368;

(6) a listing of all the short-term rental property owned by the business of January 1 of the current year;

(7) a listing of all property leased or licensed to, and held for rental by, the business on January 1 of the current year, and the name and address of the owner of such property;

(8) an oath signed by the person making the application or by an officer, partner or duly authorized agent of the applicant that the business is qualified for tax treatment as a short-term rental business and that the business will collect and remit short-term rental taxes in the time and manner prescribed by law; and

(9) such other information as the director may require.

(b) A person who has not previously been engaged in the short-term rental business who applies for a certificate of registration pursuant to this section shall be eligible for registration upon his certification that he anticipates meeting the requirements of either 3-2-356(f)(1) or 3-2-356(f)(2), designated by the applicant at the time of application, during the year for which registration is sought.

Sec. 3-2-359 Certificate of registration.

Upon approval of the application by the director, required by section 3-2-358, a certificate of registration shall be issued for each location from which a short-term rental business is to be conducted or operated in the city. The certificate shall be conspicuously displayed at all times at the place of business for which it is issued. The certificate shall not be assignable and shall be valid only for the business and location designated thereon.

Sec. 3-2-360 Decertification and recertification.

(a) In the event that the director makes a written determination that a rental business previously certified as short-term rental business, pursuant to section 3-2-359, has failed to meet either of the tests set forth in section 3-2-356(f) during a preceding tax year, such business shall lose its certification as a short-term rental business and shall be subject to the business personal property tax with respect to all rental property for the tax year in which such certification is lost and any subsequent tax years until such time as the rental business obtains recertification pursuant to this article.

(b) In the event that a rental business loses its certification as a short-term rental business pursuant to this section, such business shall not be required to refund to customers short-term rental taxes previously collected in good faith and shall not be subject to assessment for business personal property taxes with respect to rental property for tax years preceding the year in which the certification is lost unless the director makes a written determination that the business obtained its certification by knowingly making materially false statements in its application, in which case the director may assess the taxpayer the amount of the difference between short-term rental taxes remitted by such business during the period in which the taxpayer wrongfully held certification and the business personal property taxes that would have been due during such period but for the certification obtained by the making of the materially false statements.

(c) A rental business that has been decertified pursuant to this section shall be eligible for recertification for a subsequent tax year upon a showing that it has met one of the tests provided in section 3-2-356(f) for at least ten months of operations during the present tax year.

Sec. 3-2-361 Appeals.

Any assessment made pursuant to section 3-2-360(b) and any determination not to certify or to decertify a rental business as a short-term rental business as defined in this article, may be appealed pursuant to the procedures and requirements set forth in section 58.1-3983.1 of the Code of Virginia (1950), as amended, for appeals of local business taxes, which shall apply mutatis mutandis to such assessments and certification decisions.

Sec. 3-2-362 Collection and record-keeping.

(a) Every person engaging in a short-term rental business with a valid certificate of registration shall collect the short-term rental tax from each lessee of short-term rental property at the time of the rental. The amount of the tax shall be separately stated and added to the rental price or charge.

(b) Every person collecting the short-term rental tax shall maintain a record of the rental transactions for which the tax is collected. This record shall, for each transaction, contain the following:

- (1) a description of the property rented;
- (2) the period of time over which the property was rented;
- (3) the name and address of the person to whom the property was rented; and
- (4) the total amount charged for the rental, including all late charges, penalties and interest.

(c) Every person engaging in a short-term rental business shall maintain a record of the rental transactions which are claimed to be exempt from payment of the short-term rental tax. In addition to the information specified in subsection (b), this record shall, for each transaction, contain the following as applicable:

- (1) a copy of the Virginia Department of Taxation tax exemption certificate;
- (2) a copy of the U.S. State Department tax exemption certificate which specifies the exempt lessee by name; or
- (3) other explanation and proof of the claimed exemption.

Sec. 3-2-363 Quarterly returns and remittance of tax.

(a) Each certified short-term rental business subject to the provisions of this article shall file quarterly tax returns with the director. Such returns shall be filed within 15 days of the end of a quarter and shall state for the quarter just ended:

(1) the total gross receipts, as the term is defined in section 9-1-2 of this code, of the business;

(2) the total gross proceeds of the business;

(3) the portion of the total gross proceeds of the business claimed to be exempt from the short-term rental tax pursuant to section 3-2-357 or 3-2-368; and

(4) the total short-term rental taxes due and owing for the quarter.

(b) The director shall assess the tax due, and the short-term rental business shall pay the tax so assessed to the director not later than the last day of the month following the end of the quarter. Until paid to the city, any short-term rental taxes collected by the business shall be deemed to be held in trust for the city.

(c) Whenever any person required to collect a tax under this article shall cease to operate the short-term rental business, such person shall, within 20 days of ceasing to operate the business, file with the director a report containing the information required by subsection (a) and shall make the payment required by subsection (b).

Sec. 3-2-364 Effect of failure or refusal to collect tax.

The certificate of registration of any person engaging in a short-term rental business who fails or refuses to collect the tax imposed under this article shall, after 15 days notice by the city, be revoked. Thereafter, unless a new certificate is issued, the business shall be ineligible for the tax status conferred by this article and shall be subject to all applicable taxes levied by this code.

Sec. 3-2-365 Penalties and interest; failure to file return or pay over taxes collected.

(a) If any person engaging in a certified short-term rental business fails or refuses, within the time specified in this article, to file a return required by section 3-2-363 or to remit to the director the taxes required to be collected, there shall be added to the taxes past due a penalty equal to 6 percent of such taxes if the failure is not for more than one month, with an additional 6 percent for each additional month, or fraction thereof, during which the failure continues, not to exceed 30 percent in the aggregate. In no case, however, shall the penalty be less than ten dollars and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown

to the satisfaction of the director, such return with or without remittance may be accepted exclusive of penalties.

(b) In the case of a false or fraudulent return where willful intent to defraud the city of the tax due under this article, or in the case of a willful failure to file a return with the intent to defraud the city of any such tax, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. It shall be prima facie evidence of intent to defraud the city of any tax due under this article when any person engaged in a short-term rental business reports his gross proceeds at 50 percent or less of the actual amount.

(c) In addition, interest on both the overdue taxes and the penalty shall commence on the first day following the day such taxes are due and shall continue until all taxes and penalties are paid. Interest at a rate determined in accordance with section 58.1-15 of the Code of Virginia (1950), as amended, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to section 58.1-15 of the Code of Virginia (1950), as amended, after which interest shall accrue as provided therein.

(d) All penalties and interest imposed by this article shall be payable by the person engaged in the short-term rental business and collectible by the director in same manner as if they were part of the tax imposed.

(e) The imposition of a penalty under this section shall not be deemed a defense to any criminal prosecution for failure to comply with any of the requirements of this article.

Sec. 3-2-366 Uncertified lessor prohibited from collecting tax; erroneously collected taxes to director.

(a) It shall be unlawful for any person to collect from a lessee the short-term rental tax levied by section 3-2-357, unless said person possesses a valid certificate of registration issued by the director. Any person violating this prohibition shall be subject to the penalty set out in section 3-2-367. Any taxes collected in a manner not authorized by law shall be forfeited to the city.

(b) Any person collecting the tax on transactions exempt or not taxable under this article shall transmit to the director such erroneously or illegally collected tax unless and until he can affirmatively show that the tax has since been refunded to the lessee.

Sec. 3-2-367 Criminal penalties.

(a) Any person failing or refusing to file a return or remit taxes, as required by section 3-2-363, or failing or refusing to file a supplemental return or other data as required under this article, or who makes a false or fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim for refund, or who gives or knowingly receives a false or

fraudulent exemption certificate, or who violates any other provision of this article, punishment for which is not otherwise herein provided, shall be guilty of a class 1 misdemeanor.

(b) The punishment provided for in this section shall be in addition to any other remedy for the collection of taxes provided by law.

Sec. 3-2-368 Exemptions.

(a) No such tax shall be assessed on the following:

(1) rentals of tangible personal property to the Commonwealth of Virginia, to any political subdivision of the Commonwealth or to the United States; or

(2) rentals of durable medical equipment, as this term is defined in section 58.1-609.10(10) of the Code of Virginia (1950), as amended.

(b) The exemptions provided in sections 58.1-609.1 through 58.1-609.11 of the Code of Virginia (1950), as amended, shall apply to the short-term rental tax.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: 11/21/2009