

ORDINANCE: 2023-06

AN ORDINANCE ESTABLISHING CHAPTERS 185 AND 195 OF THE CODIFIED ORDINANCES RELATING TO HOTEL/MOTEL LODGING EXCISE TAX AND AN EXCISE TAX ON SHORT-TERM RENTALS

WHEREAS, Council desires to enact the within Hotel/Motel Lodging Excise Tax and an excise tax on short-term rentals in the Village in order to balance the Village's need to maintain its tax base, while allowing property owners to receive remuneration for renting all or part of their dwellings.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Chesapeake, Lawrence County, Ohio, to wit:

SECTION 1. Council hereby establishes Chapters 185 and 195 of the Codified Ordinances relating to Short-Term Rental regulations and an excise tax on Short-Term Rentals as set forth in the attachment to this legislation.

SECTION 2. All formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and all deliberations of this Council or any of its committees that resulted in such formal action were taken in meetings open to the public and/or in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance shall take effect and be in force as of the earliest date permitted by law.

SECTION 4. Effective Date. This Ordinance shall take effect on the \_\_\_ day of \_\_\_, 2023.

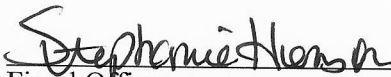
IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_ day of \_\_\_, 2023.

  
MAYOR DREW GRIFFIN

  
PRESIDENT PRO TEMPORE WELLS

Attest:

Readings:

  
Fiscal Officer

1<sup>st</sup> 4/3

2<sup>nd</sup> 5/11

3<sup>rd</sup> 6/5

Council Votes on Passage:

Mrs. Blake:

Mr. Wells:

Mr. Martin:

Mr. Hart:

Mr. Henson:

Ms. Bentley:

**CHAPTER 185**  
**SHORT-TERM RENTAL TAX**

- 185.01 Intent of Tax
- 185.02 Definitions
- 185.03 Purpose, Rate, and Application of Tax
- 185.04 Transient Guest to pay tax
- 185.05 Records Inspection and Preservation
- 185.06 Tax to be separately stated and charged
- 185.07 Regulations for filing returns
- 185.08 Refunds
- 185.09 Failure to Collect and Report Tax; Determination by Fiscal Officer
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- 185.12 Interest on Unpaid Tax
- 185.121 Booking Agents
- 185.13 Penalties on Unpaid Tax
- 185.14 Rules and Regulations
- 185.99 Penalty

**185.01 INTENT OF TAX.**

It is the intent of the Village to levy an excise tax of three percent (3%) on transactions by which lodging is or is to be furnished in a Short-Term Rental Dwelling to Transient Guests as referred to and authorized by RC 5739.02(C). Accordingly, this chapter shall be construed to effectuate that purpose and so as to be consistent with any requirement of law, compliance with which is a prerequisite to the validity of the tax intended to be levied hereby.

**185.02 DEFINITIONS.**

As used in this chapter:

(a) "Fiscal Officer" means the individual charged with direct responsibility for administration of a tax levied by the Village of Chesapeake in accordance with this chapter.

(b) "Booking Agent" means any person or entity that facilitates reservations or collects payment for Short-Term Rental Dwelling accommodations on behalf of or for a Vendor. Merely publishing an advertisement for accommodations does not make the publisher a Booking Agent.

(c) "Short-Term Rental Dwelling" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where lodging for less than thirty consecutive days is offered to guests in one (1) or more rooms, regardless of use of keyed entry, whether such rooms are in one (1) or several structures, and whether the rooms are located in different structures or on different parcels of land if the structures are not identified in advertisements of the accommodations as distinct establishments.

(d) "Transaction Price" means the total amount of consideration, including money or any other value, paid, or to be paid, or given by, or on behalf of, a Transient Guest to a Short-Term Rental Dwelling Vendor or Booking Agent in exchange for lodging. The Transaction Price is the amount advertised or published to the public inclusive of any fees built into the advertised or published price; however, service fees or booking fees, if separately stated, shall not be included in the Transaction Price.

(e) "Transient Guest" or "Transient Guests" means a person or persons occupying a room or rooms for lodging for less than thirty (30) consecutive days.

(f) "Vendor" means the person who is the owner or operator of the Short-Term Rental Dwelling and who furnishes the lodging.

### **185.03 PURPOSE, RATE, AND APPLICATION OF TAX.**

(a) There is hereby levied an excise tax of three percent (3%) on transactions by which lodging at a Short-Term Rental Dwelling is, or is to be, furnished to Transient Guests.

(b) The excise tax levied under this chapter shall provide revenue for the purposes of general municipal operations, procurement of fixed assets or permanent improvements, payment of debt charges, the elimination of deficits in Village funds, and for all other lawful purposes. To carry out such purposes, the receipts of the tax levied under this chapter shall be deposited to the credit of the General Fund.

(c) The tax, which shall be known as the short-term rental tax, applies and is collectible at the time the lodging is furnished, regardless of the time when the price is paid. The tax shall not apply to transactions by which lodging is furnished to:

- (1) the Federal government, the State, or any of its political subdivisions; or
- (2) a person maintaining occupancy for a period of thirty (30) or more consecutive days; provided, however, that except in the case of employees of the same employer, no occupancy may be used in combination with the occupancy of another, regardless of the source of payment, to exempt a transaction under this division.

(d) For the purpose of the proper administration of this chapter and to prevent the evasion of the tax, it shall be presumed that all lodging furnished at Short-Term Rental Dwellings in the Village to Transient Guests is subject to the tax until the contrary is established.

### **185.04 TRANSIENT GUEST TO PAY THE TAX.**

- (a) The short-term rental tax shall be paid by the Transient Guest to the Vendor unless division (b) of this section applies. Each Vendor shall collect from the Transient Guest the full and exact amount of the tax payable on the taxable price for each taxable lodging. The tax required to be collected under this chapter shall be deemed to be held in trust by the Vendor until paid to the Fiscal Officer as provided in Section 185.07 of this chapter. If, for any reason, the tax due is not paid to the Vendor, the Fiscal Officer may require the Transient Guest to pay such tax directly to the Fiscal Officer.
- (b) A Booking Agent collecting for a Vendor may collect and remit the short-term rental tax in place of the Vendor, and in that instance, the Vendor shall not be responsible for collecting the short-term rental tax on any transaction for which the Vendor has received confirmation that the Booking Agent has collected and remitted the tax. If the Booking Agent collects the short term rental tax, the requirements imposed on the Vendor set forth in section 185.04(a) shall be applicable to the Booking Agent.

### **185.05 RECORDS INSPECTION AND PRESERVATION.**

Each Vendor and Booking Agent shall maintain complete and accurate records of lodging furnished, together with a record of the tax collected thereon. Such records shall be open and accessible to inspection by the Fiscal Officer within the Village within fifteen (15) days upon notification in writing to the Vendor or Booking Agent. Such records shall be preserved for a period of three (3) years, unless the Fiscal Officer in writing consents to their destruction within that period, or by order requires that they be kept for a longer period of time.

### **185.06 TAX TO BE SEPARATELY STATED AND CHARGED.**

(a) The Vendor, or Booking Agent collecting for a Vendor, shall state and charge the short-term rental tax to the Transient Guest separately from the charge for the lodging and on any record thereof, at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill or statement or charge made for occupancy issued or delivered by the Vendor or Booking Agent.

(b) No Vendor or Booking Agent shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the Vendor or Booking Agent, or that the tax will not be added to the amount charged for the lodging, or that, if added, any part will be refunded except in the manner provided in this chapter.

### **185.07 REGULATIONS FOR FILING RETURNS.**

(a) Each Vendor, or Booking Agent collecting for a Vendor, shall on or before the last day of the quarter make and file a return for the preceding quarter, on forms prescribed by the Fiscal Officer, showing the receipts from furnishing lodging, the amount of tax due from the Vendor, or Booking Agent collecting for a Vendor, to the Village for the period covered by the return, and such other information as the Fiscal Officer deems necessary for the proper administration of this chapter. All returns shall be signed by the Vendor, its authorized agent, or Booking Agent collecting for a Vendor. Returns shall be filed by delivering or mailing the same to the Fiscal Officer together with payment of the full amount of tax shown to be due thereon.

(b) The Fiscal Officer may authorize Vendors, or Booking Agents collecting for Vendors, whose tax liabilities are not such as to merit quarterly returns as determined by the Fiscal Officer upon the basis of administrative costs of the Village, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed.

(c) Each Vendor, or Booking Agent collecting for a Vendor, shall file all claims for exemption from tax filed by the Transient Guests with the Vendor during the reporting period with the return.

(d) The Fiscal Officer shall treat all returns and payments submitted by Vendors, and Booking Agents collecting for Vendors, as confidential and shall not release them except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State, the County, or the Village, for official use only, or except as required by law.

### **185.08 REFUNDS.**

The Fiscal Officer shall refund or grant credits to Vendors, or Booking Agents collecting for Vendors, for the amount of tax paid illegally or erroneously or paid on any illegal or erroneous assessment where the Vendor or Booking Agent has not reimbursed itself from the Transient Guest. As between a Vendor and a Booking Agent, the request for refund shall be made by the party that filed the return containing the illegal or erroneous assessment. A Transient Guest may obtain a refund or credit for the amount of taxes paid illegally or erroneously, but only when the tax was paid by the Transient Guest directly to the Fiscal Officer. No refund shall be paid unless the claimant establishes a right thereto by written records showing entitlement thereto and makes a claim filed within three (3) years of the date of payment in the manner and on forms prescribed and furnished by the Fiscal Officer, and stating under penalty of perjury, the specific grounds upon which the claim is founded.

### **185.09 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION BY FISCAL OFFICER.**

(a) If any Vendor fails or refuses to collect the short-term rental tax or to file a return or remit the tax or any portion thereof, as required by this chapter, and the Vendor has not received confirmation that a Booking Agent has collected and remitted the tax, the Fiscal Officer shall proceed in such manner as he or she may deem best to obtain information on which to base an assessment of the tax due. When the Fiscal Officer has obtained such information as he or she is able, he or she shall proceed to determine and assess against such Vendor the tax and penalty provided for in this chapter.

(b) In case such determination is made, the Fiscal Officer shall serve notice upon the Vendor of the amount so assessed, either by personal service, by registered or certified mail, or by a delivery service authorized under Section 5703.056 of the Ohio Revised Code, to the address provided to the Village by the Vendor, or if no such address is provided, to the property tax mailing address for the property on file with the County Fiscal Officer. If delivery is not made due to an undeliverable address or refusal of service, the assessment shall be sent by ordinary mail and be considered served. Such Vendor may, within thirty (30) days after the serving or mailing of such notice, apply in writing to the Fiscal Officer for a hearing on the correctness of the amount assessed. If the Vendor does not apply within the time prescribed, the tax and penalty determined by the Fiscal Officer shall become final and conclusive and due and payable. If the Vendor makes timely application, the Fiscal Officer shall give the Vendor written notice not less than five (5) days in advance in the manner prescribed in this section, to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax and penalty. At any such hearing, the Vendor may appear and offer evidence why such specified tax and penalty should not be so fixed.

(c) After such hearing, the Fiscal Officer shall determine the proper amount of tax due and shall thereafter give written notice to the Vendor, in the manner prescribed in this section, of such determination and the amount of such tax and penalty. The amount determined to be due shall be payable within fifteen (15) days from the date of the Fiscal Officer's determination.

### **185.10 APPEALS.**

Any vendor aggrieved by the decision of the Fiscal Officer with respect to the amount of the tax, interest and penalties, may appeal to the Board of Review by filing a notice of appeal with the Fiscal Officer within fifteen (15) days of the serving or mailing of the determination of the tax due. The Board shall fix a time and place for hearing the appeal and shall give notice in writing to the vendor at his or her last known place of address. The findings of the Board shall be served upon the vendor in the manner prescribed above for service of the notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the Board findings.

### **185.11 ACTIONS TO COLLECT.**

Any tax required to be paid under the provisions of this chapter shall be deemed a debt owed by the Transient Guest to the Village. Any such tax not collected by a Vendor, or a Booking Agent collecting for a Vendor, pursuant to the provisions of this chapter, or any tax paid by a Transient Guest to a Vendor, or a Booking Agent collecting for a Vendor, not paid to the Village pursuant to the provisions of this chapter, shall be deemed a debt owed by the Vendor or Booking Agent to the Village. Any person owing money to the Village under the provisions of this chapter shall be liable to an action brought in the name of the Village for the recovery of such an amount and/or be subject to the penalties set forth in sections 185.12, 185.13, and 185.99 of this chapter.

### **185.12 INTEREST ON UNPAID TAX.**

The tax imposed and collected or required to be collected under the provisions of this chapter remaining unpaid to the Village after the tax becomes due shall bear interest at the rate of the federal short-term interest rate, rounded to the nearest whole number percent, plus five percent. The rate shall apply for the calendar year next following the July of the year in which the federal short-term interest rate is determined under Section 1274 of the Internal Revenue Code.

### **185.121 BOOKING AGENTS.**

(a) Any Booking Agent that facilitates transactions for one (1) or more Short-Term Rental Dwellings in the Village and does not collect or remit the tax on behalf of all the Vendors of such Short-Term Rental Dwellings shall provide to the Village, quarterly within thirty (30) days of the end of each calendar quarter, a transaction report. The transaction report shall consist of all listings by the Vendors during the preceding calendar quarter, including, but not limited to, the dates of occupancy for each lodging and the amount paid for each completed transaction.

(b) Any Booking Agent that lists one (1) or more Short-Term Rental Dwellings in the Village shall:

- (1) at the time any Vendor first obtains a short-term rental certificate, notify the Vendor of the Vendor's tax and obligations to the Village; and
- (2) annually provide all Vendors of one (1) or more Short-Term Rental Dwellings with a reminder of their tax and license obligations to the Village.

### **185.13 PENALTIES ON UNPAID TAX.**

In addition to interest as provided in Section 185.12 hereof, penalties based on the unpaid tax are hereby imposed as follows:

(a) Any Vendor, or Booking Agent collecting for a Vendor, who fails to remit any tax imposed by this chapter within thirty (30) days after the date required shall pay, in addition to the tax, a penalty equal to ten percent (10%) of the amount of the tax;

(b) Any Vendor, or Booking Agent collecting for a Vendor, who fails to remit any tax imposed by this chapter within sixty (60) days after the date required shall pay, in addition to the tax, a penalty equal to fifteen percent (15%) of the amount of the tax;

(c) Any Vendor, or Booking Agent collecting for a Vendor, who fails to remit any tax imposed by this chapter within ninety (90) days after the date required or upon a second delinquency shall pay, in addition to the tax, a penalty equal to twenty percent (20%) of the amount of the tax;

(d) Any Vendor, or Booking Agent collecting for a Vendor, who fails to remit any tax imposed by this chapter within one hundred twenty (120) days or more or upon a third or later delinquency shall pay, in addition to the tax, a penalty equal to twenty-five percent (25%) of the amount of the tax.

### **185.14 RULES AND REGULATIONS.**

The Fiscal Officer shall have the power to adopt rules and regulations not inconsistent with the terms of this chapter for carrying out and enforcing the payment, collection, and remittance of the short-term rental tax. A copy of such rules and regulations shall be published in the Village Record at least once before they shall become effective. Copies shall be printed and made available in the office of the Fiscal Officer.

**185.99 PENALTY.**

(a) Any Vendor or Booking Agent who fails to file any return or report required under this chapter or violates any other provision of this chapter shall be guilty of a misdemeanor of the first degree and be subject to a maximum fine of one thousand dollars (\$1,000.00) per occurrence or imprisonment of up to six months, or both. A separate offense shall be deemed to occur on the first day of each month that the offense continues.

(b) If not otherwise specified herein, no person or entity shall:

(1) Fail, neglect, or refuse to file any return or make any declaration required by this ordinance;

(2) File any incomplete or false return or provide any false information to the Fiscal Officer;

(3) Fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this ordinance; or

(4) Refuse to produce to the Tax Fiscal Officer or permit the Tax Fiscal Officer or any duly authorized agent or employee to examine, the books, records, or papers relating to short-term rentals of the Vendor or Booking Agent.

## **CHAPTER 195 HOTEL/MOTEL LODGING EXCISE TAX**

- 195.01 Definitions.
- 195.02 Imposition of tax.
- 195.03 Transient guest to pay tax.
- 195.04 Exemptions from excise tax.
- 195.05 Tax to be separately stated and charged.
- 195.06 Registration.
- 195.07 Reporting and remitting.
- 195.08 Penalties and interest.
- 195.09 Failure to collect and report tax; determination of Fiscal Officer.
- 195.10 Appeal.
- 195.11 Board of Review.
- 195.12 Records.
- 195.13 Refunds.

### **195.01 DEFINITIONS.**

Except where the context otherwise requires, the definitions given in this section govern the construction and are the meaning of the words defined.

- (a) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, the State and its political subdivisions, or any other group or combination acting as a unit.
- (b) "Fiscal Officer" means the Fiscal Officer of the Village of Chesapeake or his/her appointed designee.
- (c) "Hotel" and "Motel" and Motor Inn" means every establishment including Bed and Breakfast and Short-Term Rentals as defined in ORC 1133.01, kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered for a consideration to guests, in which five or more rooms are used for the accommodations of such guests, whether such rooms are in one or several structures.
- (d) "Transient guests" means a natural person who physically occupies a room or rooms for sleeping accommodations for less than thirty consecutive days.
- (e) "Vendor" means the person who is the proprietor of the hotel, motel or motor inn, whether in the capacity of owner, lessee, mortgagee in possession, licensee or any other capacity. Where the vendor performs its functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed a vendor for the purposes of this chapter and shall have the same duties and liabilities as its principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (f) "Excise tax" means the tax levied by the Village on transactions by which lodging by a hotel, motel or motor inn is or is to be furnished to transient guests.
- (g) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

### **195.02 IMPOSITION OF TAX.**

- (a) For the purpose of providing revenue with which to meet the needs of the Village for the use of the General Revenue Fund of the Village, an excise tax is hereby levied on transactions by which lodging by



a hotel, motel or motor inn is or is to be furnished to transient guests. The tax is three percent (3%) of the amount paid or to be paid by the transient guest for the lodging.

(b) Commencing January 1, 2023, for the purpose of providing revenue for the Village to promote economic development and tourism related activities, an additional three percent (3%) excise tax is hereby levied on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to ORC §5739.09(B)(3). This tax shall be in addition to the three percent (3%) tax currently being levied pursuant to ORC §5709.02, resulting in a total aggregate tax due of six percent (6%).

(c) The tax applies and is collectible at the time the lodging is furnished, regardless of the time when the amount paid for lodging is paid.

(d) For the proper administration of this chapter and to prevent evasion of the tax, it is presumed that all lodging furnished by hotels, motels and motor inns in the Village is to be to transient guests and is subject to the tax until the contrary is established.

### **195.03 TRANSIENT GUEST TO PAY TAX.**

The tax imposed by this chapter shall be paid by the transient guest to the vendor, and each vendor shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging.

### **195.04 EXEMPTIONS FROM EXCISE TAX.**

(a) No tax shall be imposed under this chapter:

- (1) Upon rents not within the taxing power of the Village under the Constitution or laws of Ohio or the United States;
- (2) Upon rents paid by the State of Ohio or any of its political subdivisions.

(b) No exemption claimed under subsections (a)(1) or (2) above shall be granted except upon a claim therefor made at the time rent is collected, and under penalty of perjury, upon a form prescribed by the Fiscal Officer.

### **195.05 TAX TO BE SEPARATELY STATED AND CHARGED.**

(a) The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy, or any bill or statement or charge made for an occupancy issued or delivered by the operator, and the tax shall be paid by the transient guest to the vendor as trustee for and on account of the Village and the vendor shall be liable for the collection thereof and for the tax.

(b) No vendor of a hotel, motel or motor inn shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the vendor, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

### **195.06 REGISTRATION.**

Within thirty (30) days after the effective date of this chapter or within thirty days after commencing business, whichever is later, each vendor of any hotel, motel or motor inn renting lodging to transient guests shall register the hotel with the Fiscal Officer and obtain from him or her a transient occupancy registration certificate, to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

- (a) The name of the vendor;
- (b) The address of the hotel;
- (c) The date upon which the certificate was issued;

(d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Village of Chesapeake Hotel/Motel Excise Tax Code of Regulations by registering with the Fiscal Officer for the purpose collecting from transient guests the Transient Occupancy Tax and remitting said tax to the Fiscal Officer. This certificate does not constitute a permit."

#### **195.07 REPORTING AND REMITTING.**

Each vendor shall on or before the tenth (10th) day of the month following the close of each month, make a return to the Fiscal Officer on forms provided by him or her, of the total rents charged and received and the amount of tax collected for the transient occupancies. All claims for exemption from tax filed by occupants with the operator during the reporting period shall be filed with the report.

At the time the return is filed, the full amount of the tax collected shall be remitted to the Fiscal Officer. The Fiscal Officer may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to insure collection of the tax and he or she may require further information in the return if such information is pertinent to the collection of the tax. Returns and payments are due immediately upon cessation of business for any reason.

All taxes collected by vendors pursuant to this regulation shall be held in trust for the account of the Village of Chesapeake until payment thereof is made to the Fiscal Officer. All returns and payments submitted to each vendor shall be treated as confidential by the Clerk- Treasurer and shall not be released by him or her except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of Ohio, the County of Lorain or in order to comply with the requirements of Ohio R.C. Section 149.43. A statement of account shall be furnished annually, to all operators effective December 31st of the current year.

#### **195.08 PENALTIES AND INTEREST.**

(a) Delinquency. Any vendor who fails to remit any tax imposed by this chapter within the time required shall pay a penalty equal to ten percent (10%) of the amount of the tax, in addition to the tax.

(b) Continued Delinquency. Any vendor who fails to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty equal to ten percent (10%) of the amount of the tax and previous penalty in addition to the tax and the ten percent (10%) first imposed. An additional penalty equal to ten percent (10%) of the total tax and penalty of the previous thirty-day period shall be added for each successive thirty-day period that the account remains delinquent.

(c) Fraud. If the Fiscal Officer determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsection (a) hereof.

(d) Interest. In addition to the previous penalties imposed, any vendor who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month, or fraction thereof, on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(e) Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing provided for in Section 195.09, nor during the pendency of any appeal to the Board of Review provided for in Section 195.10 hereof.

(f) Abatement of Interest and Penalty. In cases where a return has been filed in good faith, and an assessment has been paid within the time prescribed by the Fiscal Officer, the Fiscal Officer may abate any charge of penalty or interest or both.

**195.09 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF FISCAL OFFICER.**

If any vendor fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax, or any portion thereof required by this chapter, the Fiscal Officer shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the Fiscal Officer procures such facts and information upon which to base the assessment of any tax imposed by this chapter and payable by any vendor who has failed or refused to collect the same and to make a report and remittance, he or she shall proceed to determine and assess against the vendor the tax, interest and penalties provided for by this chapter.

In case such determination is made, the Fiscal Officer shall give notice of the amount so assessed by serving it personally, or by depositing it in the U.S. mail, postage prepaid, addressed to the vendor so assessed at the vendor's last known place of address. The vendor may within ten (10) days after the service or mailing of the notice make application in writing to the Fiscal Officer for a hearing on the amount assessed.

If an application by the vendor for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Fiscal Officer, shall become final and conclusive, and immediately be due and payable.

If an application by the vendor is made, the Fiscal Officer shall give not less than five (5) days' written notice in the manner prescribed herein to the vendor to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for the tax, interest and penalties. At the hearing the vendor may appear and offer evidence why the specified tax, interest and penalties should not be so fixed.

After the hearing, the Fiscal Officer shall determine the proper tax to be remitted, and shall give written notice to the vendor in the manner prescribed herein of the determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as proved in Section 195.10 hereof.

**195.10 APPEAL.**

Any vendor aggrieved by the decision of the Fiscal Officer with respect to the amount of the tax, interest and penalties, may appeal to the Board of Review by filing a notice of appeal with the Fiscal Officer within fifteen (15) days of the serving or mailing of the determination of the tax due. The Board shall fix a time and place for hearing the appeal and shall give notice in writing to the vendor at his or her last known place of address. The findings of the Board shall be served upon the vendor in the manner prescribed above for service of the notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the Board findings.

**195.11 BOARD OF REVIEW.**

(a) A Board of Review, consisting of the Mayor and the Counsel for The Village, is hereby created. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearings by the Board may be conducted privately and the provisions of Section 195.07 hereof with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(b) The Board shall hear and pass on appeals from any ruling or decision of the Fiscal Officer, and at the request of the vendor or the Fiscal Officer, is empowered to substitute alternate methods of allocation. The Board shall have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

#### **195.12 RECORDS.**

Every vendor liable for the collection and payment to the Village of Chesapeake of any tax imposed by this chapter shall keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of tax that he or she may have been liable for the collection of and payment to the Village, which record the Fiscal Officer shall have the right to inspect at all reasonable times.

#### **195.13 REFUNDS.**

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Village of Chesapeake under this regulation, it may be refunded as provided in subparagraph (b) and (c) of this section provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Fiscal Officer within three years of the date of payment. The claim shall be on forms furnished by the Fiscal Officer.

(b) A vendor may claim a refund or take a credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Fiscal Officer that the person from whom the tax has been collected was not a transient guest, provided, however that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient guest or credited to rent subsequently payable by the transient guest to the vendor.

(c) A transient guest may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the Village by filing a claim in the manner provided in subparagraph (a) of this section, but only when the tax was paid by the transient guest directly to the Fiscal Officer, or when the transient guest having paid the tax to the vendor, establishes to the satisfaction of the Fiscal Officer that the transient guest has been unable to obtain a refund from the vendor who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.