

**Rules
of
Georgia Department of Community Affairs**

**Chapter 110-3-3
Hotel Motel Tax Reporting and Hotel Motel Tax Performance Review Board**

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**Chapter 110-3-3-.01
PURPOSE AND OVERVIEW**

110-3-3-.01(1) Report Overview. O.C.G.A. 48-13-56 requires each county or municipality imposing a Hotel Motel Tax, as a condition of continuing its authorization to impose the tax, to file an annual report with the Department of Community Affairs (DCA) specifying the rate of taxation and amounts collected and expended pursuant to the law. It further requires that these reports be filed as specified by rule of DCA.

110-3-3-.01(2) Performance Review Board Overview. O.C.G.A. 48-13-56.1 creates a Hotel Motel Tax Performance Review Board to conduct, or cause to be conducted, a thorough and complete investigation of complaints with respect to all actions of a county, municipality, or any other entity regarding its expenditure of funds received from a tax under O.C.G.A. 48-13-56 and such county's, municipality's, or other entity's compliance with state law and regulations. It further specifies that the commissioner of community affairs shall promulgate such rules and regulations as may be necessary for the administration of this Code section.

110-3-3-.01(3) Purpose. The purpose of this rule is to establish the reporting mechanism required by O.C.G.A. 48-13-56 and to establish rules and regulations for the administration of the Hotel Motel Tax Performance Review Board required by O.C.G.A. 48-13-56.1.

**Chapter 110-3-3-.02
HOTEL MOTEL TAX REPORT**

110-3-3-.02(1) Format. DCA shall develop and/or amend forms as necessary for the submission of the information required under O.C.G.A. 48-13-56. These forms shall be titled the Hotel

Motel Tax Report and will require local governments to report Hotel Motel Tax receipts, expenditures, and related information as provided in O.C.G.A. 48-13-56 for the most recently completed fiscal year.

110-3-3-.02(2) Ordinance. All local governments collecting a Hotel Motel Tax must file a copy of the most current enabling resolution or local government ordinance authorizing the collection of a Hotel Motel Tax with the Department of Community Affairs.

CHAPTER 110-3-3-.03 REPORT SUBMITTAL RULES

110-3-3-.03(1) Deadlines. The Hotel Motel Tax Report must be submitted to DCA within 180 days of the local governments' fiscal year end.

110-3-3-.03(2) Report Location. The Hotel Motel Tax Report will be accessible on the DCA website.

110-3-3-.03(3) Form Revisions. The Department may amend the reporting form, the electronic filing format, and the submittal method as it deems necessary to better serve the needs of the users of the reports, and/or to update the report for changes in the informational requirements of Generally Accepted Accounting and Financial Reporting Standards or to accommodate requirements surrounding the collection of information.

CHAPTER 110-3-3-.04 PENALTIES FOR REPORTING NONCOMPLIANCE

110-3-3-.04(1) Noncompliance. A local government's continued failure to submit an annual report within the required time frame will result in the notification of the Performance Review Board of the government's delinquent status. Continued failure shall mean no submissions have been received for any of the 3 most recently completed fiscal years.

CHAPTER 110-3-3-.05 HOTEL MOTEL TAX PERFORMANCE REVIEW BOARD AND COMPLAINT STANDARDS

110-3-3-.05(1) Membership. The membership and terms of office of the Hotel Motel Tax Performance Review Board shall be as specified in O.C.G.A. 48-13-56.1.

110-3-3-.05(2) Meetings. The Hotel Motel Tax Performance Review Board shall meet annually between September 1 and December 1 to review complaints filed in accordance with paragraph (4) of this Chapter, as well as to satisfy the requirements of O.C.G.A. 48-13-56.1. DCA shall give notice to all interested parties of the meeting place and time.

110-3-3-.05(3) Forms. DCA shall develop and/or amend forms as necessary for the submission of complaints from interested parties.

110-3-3-.05(4) Minimum Standards.

- a.** Complaints must be related to impermissible expenditures of or failure to appropriately expend Hotel Motel Tax receipts collected by a local government in the current or most recently ended fiscal year. A complaint may involve a local government or other entities authorized by the local government to expend Hotel Motel Tax revenues. Complaints that may not be considered include:
 - i.** Complaints regarding contractual disputes;
 - ii.** Complaints regarding funds collected prior to the most recently ended fiscal year;
 - iii.** Complaints regarding funds from previous corrective actions by the Performance Review Board, without providing sufficient evidence demonstrating a new instance of impermissibility.
- b.** Examples of impermissible expenditures may include, but are not limited to:
 - i.** Expenditures not meeting the definition of Tourism Product Development;
 - ii.** Expenditures not meeting the definition of Tourism, Conventions and Trade Shows;
 - iii.** Non-compliance with the required budget plan;
 - iv.** Expenditures by an organization not permitted under O.C.G.A. 48-13-51;
 - v.** Collection of the tax without compliance with state law and regulations, including instances of reporting non-compliance;
 - vi.** Other circumstances as determined by the Performance Review Board or provided in Hotel Motel Tax statute.
- c.** Complaints based solely on immaterial expenditure timing issues will not be considered valid complaints. For the purposes of these Rules, the threshold for expenditure timing materiality shall be:
 - i.** Instances where the restricted expenditures from a fiscal year are less than the budgeted amount referred to in O.C.G.A. 48-13-51(j) by at least 25% of the budgeted restricted amount for the fiscal period in question.
- d.** Complaints may be submitted by taxpayers, local governments, innkeepers, or private sector nonprofit organizations.
- e.** Findings of Noncompliance in Audited Financial Statements submitted to the Department of Community Affairs by the Department of Audits and Accounts will be investigated as valid complaints provided that they meet the threshold for materiality listed in paragraph (4)(c) of this Chapter.
- f.** Complaints must cite the code section of Georgia law which pertains to the specific Hotel Motel Tax authorization of the government named in the complaint and must provide sufficient evidence documenting one or more of the alleged misuses provided in paragraph 4(b) of this chapter.
- g.** Complaints that fail to meet the criteria listed in paragraph (4) of this Chapter may be rejected for failing to meet minimum standards.

- h.** A nonrefundable filing fee of \$100 must be submitted with each complaint filed with DCA. The filing fee may be waived at the sole discretion of the Commissioner of DCA.

110-3-3-.05(5) Timeline. Complaints must be received by DCA no later than June 1 at 5:00 pm to be considered by the Hotel Motel Tax Performance Review Board in the meeting(s) held between September 1 and December 1 and must be submitted to the Department of Community Affairs in the manner and format specified by the department.

CHAPTER 110-3-3-.06 COMPLAINT PROCESSING

110-3-3-.06(1) Preliminary Report. The Department of Community Affairs shall annually notify the Performance Review Board of any complaints received by the deadline. Using the minimum standards specified in Paragraph (4) of this Chapter, DCA shall evaluate the validity of the complaint. DCA shall review and investigate each valid complaint. DCA shall produce and issue a Preliminary Report of Findings and Recommendations to the subject of the complaint. The subject shall have 30 calendar days to respond to the preliminary report, and any comments received from the subject shall be included in the Preliminary Report of Findings and Recommendations submitted to the Hotel Motel Tax Performance Review Board.

110-3-3-.06(2) Board Recommendations. The Hotel Motel Tax Performance Review Board shall meet to review and discuss the Preliminary Report of Findings and Recommendations for all valid complaints. The Performance Review Board shall direct DCA to make any changes or additions to the Report of Findings and Recommendations, which shall include such evaluations, judgments, and recommendations, as it deems appropriate. The severity and requirements of such recommendations are at the sole discretion of the Board but should take into consideration their enforceability and ability to be implemented within 90-days. Examples of such enforceable actions include but are not limited to:

- a.** Require training for staff and the governing body;
- b.** Reimbursement of the Hotel Motel Tax fund for ineligible expenditures;
- c.** Require a Destination Marketing Organization or other contractor to return Hotel Motel Tax funds to the local government to be expended for the purpose for which they were collected;
- d.** Selection of a new Destination Marketing Organization meeting the criteria defined in O.C.G.A. 48-13-50.2, or other eligible entity;
- e.** Creation of, and adherence to, a new budget plan to correct the distribution of revenues;
- f.** Other recommendations as determined by the Performance Review Board, with the exception of the termination of the tax. The authority to terminate the tax is reserved for the State Revenue Commissioner in the event that the subject of the complaint does not comply with the remedial action prescribed by the Commissioner of DCA.

110-3-3-.06(3) Submission to Commissioner. The findings of the Performance Review Board shall be submitted to the Commissioner of DCA within 60 calendar days of the final hearing of each complaint. A copy of such findings shall be provided to the subject of the complaint concurrently.

110-3-3-.06(4) Corrective Actions. The Commissioner of DCA shall have 30 calendar days to review the findings of the Hotel Motel Tax Performance Review Board. If the Commissioner determines that remedial action is necessary, the subject shall be issued a notice by certified mail, return receipt requested or statutory overnight delivery. The subject shall be given a period of 90 calendar days from the date of the Commissioner's notice to take the necessary remedial action with respect to such findings and shall notify the Commissioner of such remedial action taken. It shall be the local government's responsibility to negotiate, as necessary, with any other entity involved in the complaint to satisfactorily implement the remedial action requirements. If the Commissioner determines that the subject has substantially met the remedial action requirements, but only minor deficiencies remain, the Commissioner may allow up to 30 additional calendar days to correct such minor deficiencies. It shall be the Commissioner's sole discretion as to whether remedial action has been satisfactorily taken. In the event that satisfactory remedial action does not occur within the specified period, the Commissioner of DCA shall immediately notify the State Revenue Commissioner, who is authorized under O.C.G.A. 48-13-56.1 to take appropriate action to enforce compliance with such remedial action, up to and including termination of the tax.

CHAPTER 110-3-3-.07
PERFORMANCE REVIEW BOARD APPROVAL OF DESTINATION MARKETING ORGANIZATION ALTERATION

110-3-3-.07(1) Applicability. O.C.G.A. 48-13-51(k) assigns the Performance Review Board the responsibility to confirm or reject a proposed Destination Marketing Organization change for governments which have collected more than \$500,000 in taxes per year in any of the three preceding fiscal years.

110-3-3-.07(2) Process. If the governing authority and Destination Marketing Organization are unable to reach an agreement as to altering or changing the designated private sector nonprofit organization engaged to promote Tourism, Conventions, and Trade Shows, one or both of the entities may file a complaint form as specified in Rule 110-3-3-.05.

110-3-3-.07(3) Timeline. Such requests may be filed at any time throughout the year.

110-3-3-.07(4) Meeting Date. DCA shall select a date for the Performance Review Board's meeting to approve or reject the change in question, which can occur during the scheduled annual meeting or otherwise as needed, so long as it occurs within 60 days of the initial request for approval.

110-3-3-.07(5) Required Information. DCA shall collect the necessary information for the Board to make an informed decision ahead of such meeting, and the Board shall issue a recommendation to the Commissioner for approval or rejection of the change based on the eligibility of the new proposed private sector nonprofit organization.

110-3-3-.07(6) Criteria for Approval. The Board shall consider the definitions of Destination Marketing Organization and Private Sector Non-Profit Organization in O.C.G.A. 48-13-50.2 when considering eligibility:

- a. "Destination marketing organization" means a private sector nonprofit organization or other private entity which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986 that is supported by the tax under this article, government budget allocations, private membership, or any combination thereof and the primary responsibilities of which are to encourage travelers to visit their destinations, encourage meetings and expositions in the area, and provide visitor assistance and support as needed.
- b. "Private sector nonprofit organization" means a chamber of commerce, a convention and visitors bureau, a regional travel association, or any other private group organized for similar purposes which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986; provided, however, that a county or municipality which has prior to April 1, 1990, contracted for a required expenditure under this Code section with a private group which is exempt from federal income tax under provisions of Section 501(c) of the Internal Revenue Code other than Section 501(c)(6) may continue to contract for required expenditures with such a private group.