ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER T17

TOURISM LEVY 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 12/2010, in force 1 November 2010

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TOURISM LEVY ACT

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TOURISM LEVY ACT

Interpretation

1. (1) In this Act—

"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 respect of his or her period of occupation; or

(i) lodging occupied by persons exempted by the regulations;

"operator" means a person who sells or offers for sale guest accommodation in Anguilla;

"prescribed" means prescribed by regulation under section 24(1)(a);

"purchaser" means a person who purchases guest accommodation—

(a) for the purchaser'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) 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.

Tourism levy on purchaser and operator

2. (1) A purchaser of guest accommodation shall pay a tourism levy to the Comptroller at the rate of US$1 or the equivalent in Eastern Caribbean currency for each person, other than a child under the age of 12 years, for whom the guest accommodation is purchased for each night that the guest accommodation is purchased.

(2) An operator of a guest accommodation establishment shall also pay a tourism levy to the Comptroller at the rate of US$1 or the equivalent in Eastern Caribbean currency for each person, other than a child under the age of 12 years, for whom guest accommodation is purchased at the guest accommodation establishment for each night that the guest accommodation is purchased.

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

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

Filing returns and remitting tourism levy

3. (1) An operator who is liable to pay the tourism levy under section 2(2) or who collects the tourism levy under section 2(3), or is deemed to have collected the tourism levy under section 2(4), shall, not later than 20 days after the end of each month—

(a) file a return for each guest accommodation establishment in relation to tourism levies 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 tourism levy payable by the operator together with the tourism levy collected or deemed to have been collected by him or her during the previous month.

(2) A return is required to be filed whether or not any guest accommodation was sold by the operator or was purchased during the previous month.

Refund to purchaser of overpayment of tourism levy

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

(2) An operator who refunds an overpayment of tourism levy under subsection (1) that the operator has previously remitted to the Comptroller may deduct the amount of the refunded overpayment from the next remittance of the tourism levy that is payable to the Comptroller under section 3.

(3) If an operator fails or refuses to refund an overpayment of tourism levy to a purchaser under subsection (1)—

(a) the Comptroller may refund the overpayment to the purchaser; and

(b) if the operator had not previously remitted to the Comptroller the amount of the overpayment, the overpayment is deemed to be a tourism levy and the Comptroller may assess the operator for the amount of the overpayment in accordance with section 5 as if the amount of the overpayment were a tourism levy.

(4) Section 11 does not apply to an overpayment of tourism levy.

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

Assessment of tourism levy

5. (1) The Comptroller may—

(a) assess any tourism levy payable by a purchaser or operator under this Act within 4 years from the day the tourism levy became payable; and

(b) assess interest and penalties in addition to the tourism levy payable.

(2) The Comptroller may—

(a) assess any tourism levy required to be remitted by an operator under this Act within 4 years from the day the tourism levy was required to be remitted; and

(b) assess interest and penalties in addition to the tourism levy required to be remitted.

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

(a) has made any misrepresentation that is attributable to neglect, carelessness or wilful default;

(b) has committed fraud in making a return or in furnishing any information under this Act or the Inland Revenue Department Act in relation to a tourism levy; or

(c) has failed to disclose any relevant information;

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

(4) Liability to pay or remit a tourism levy 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 under the Inland Revenue Department Act in relation to a tourism levy and may, notwithstanding a return filed or information so furnished, or if no return has been filed or information has been furnished, assess the tourism levy payable under this Act.

Late filing penalty

6. If an operator fails to file a return as and when required by 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

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

(a) an assessment under section 4, 5, 6, 10 or 11 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 4, 5, 6, 10 or 11 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 4, 5, 6, 10 or 11 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

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

Onus of proof

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

Penalty in addition to amount owing

10. (1) If—

(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—

(i) neglect, carelessness or wilful default by or on behalf of that person, or

(ii) fraud or evasion committed 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 amounts stated in the demand.

Penalty in addition to overpayment

11. If an operator—

(a) has collected from a purchaser a tourism levy in an amount greater than required; and

(b) fails or refuses to refund the overpayment to the purchaser in accordance with section 4;

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

Notice of objection

12. A person to whom an assessment under section 4, 5, 6, 10 and 11 is directed may, in accordance with section 26 of the Inland Revenue Department Act, object to the assessment.

Registers and records

13. 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.

Hindering officer

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

Offence re documents and records

15. Any person who—

(a) makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, statement, record or other document delivered or made under this Act or in a return, statement, record or other document delivered or made under the Inland Revenue Department Act in relation to a tourism levy;

(b) destroys, alters, mutilates or disposes of the records of a person required to keep records under this Act or the Inland Revenue Department Act in relation to a tourism levy;

(c) makes or assents to or acquiesces in the making of false or deceptive entries or omits or assents to or acquiesces in the omitting of material particular to those records;

(d) wilfully evades or attempts to evade compliance with this Act or the Inland Revenue Department Act in respect of 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 not more than 300% of the tourism levy sought to be evaded or to imprisonment for not more than 2 years or to both.

Failure to file return

16. A person who fails to file a return as and when required by this Act or provide or produce information or a document as and when required by the Inland Revenue Department Act in relation to a tourism levy 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 tourism levy

17. A person who contravenes section 2 or 3(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 tourism levy required to be paid, collected or remitted under section 2 or 3(1)(b).

Actions by corporate agent

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

(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, 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 respect of a tourism levy, as a result of which the tourism levy or refund that would have been payable by or to the corporation, if the tourism levy 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 tourism levy or refund payable by or to the corporation.

Offences and punishments re corporation

19. (1) A corporation that wilfully evades or attempts to evade payment of a tourism levy 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 tourism levy 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

20. (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 respect of tourism levy;

(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 tourism levy 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 a tourism levy 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 a tourism levy payable by it, that individual is liable on summary conviction—

(a) to a fine of 300% of the amount of the tourism levy 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.

21. 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

22. A person who contravenes a provision of this Act or the Inland Revenue Department 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 of $5,000.

Limitation period

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

Regulations by Minister

24. (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 respect of whom the Minister may issue exemption certificates for the purposes of paragraph (h) of the definition of "guest accommodation" in section 1 and the form and manner of issuance of those certificates;

(c) respecting the exemption of any person or class of persons for the purpose of paragraph (i) of the definition of "guest accommodation" in section 1;

(d) respecting the exemption of persons or classes of persons from the payment of a tourism levy;

(e) respecting the collection and remittance of tourism levies under this Act;

(f) respecting the duties of operators in relation to the collection of tourism levies under this Act;

(g) respecting returns to be made to the Comptroller including the person required to make them;

(h) providing that, notwithstanding section 17 of the Financial Administration and Audit Act, the Comptroller is not required to collect or refund a tourism levy in 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 is to be made of amounts not collected or amounts not refunded;

(i) 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;

(j) defining any term used but not defined in this Act.

(2) A regulation made under paragraph (1)(i) may provide that a receipt may be combined with a receipt required by regulation under section 26(1)(k) of the Accommodation Tax Act.

(3) A regulation may provide that a contravention of any of its provisions is an offence.

Regulations by Governor in Council

25. The Governor in Council may amend or repeal and replace sections 2(1) and (2).

Citation

26. This Act may be cited as the Tourism Levy Act, Revised Statutes of Anguilla, Chapter T17.

Transitional provision

27. (1) In this section, "former Act" means the Anguilla Tourism Board Act, R.S.A. c. A80.

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

Transitional regulations

28. 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.

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