



<b>TITLE:</b> BY-LAW 6909 – A BY-LAW TO LEVY A TAX ON SHORT TERM ACCOMMODATION		Page 1 of 1
<b>PRESENTER:</b> Grant McMillan	<b>AGENDA NO:</b>	
<b>DEPARTMENT:</b> Treasury	<b>DATE:</b> May 22, 2008	
<b>CLEARANCES:</b> Nil	<b>ATTACHMENTS:</b> 1. By-law # 6909 (# pages = 5)	
<b>APPROVALS:</b>		
 _____	<u>May 22, 2008</u> Date	 _____
<b>Department Head</b>		<u>May 27, 2008</u> Date
		<b>A/City Manager</b>

**SUMMARY OF HISTORY/DISCUSSION & FUNDING:**

At the May 5, 2008 meeting of City Council, City Council passed the following motion:

“That a by-law be prepared to impose a 2% destination tax on hotel accommodations whereby monies generated from such a tax shall be targeted to promote economic development, culture and recreation within the City of Brandon and shall be designated for new events and not for capital and operating subsidies.”

In developing this by-law, it must be pointed out that there are two limiting phrases in City Council’s motion that have been expanded. The motion speaks to a “tax on hotel accommodations” but the by-law presented reflects the broadest range of accommodations including motels, bed and breakfasts, etc.

The other expanded area relates to the phrase “designated for new events”. The by-law presented has broadened that to include “new initiatives” since not all promotions in the areas of economic development, culture and recreation are “event” based.

With respect to the consultation process that will transpire, it is planned to have a Special Council meeting later in June to hear delegations with respect to this by-law. The by-law will be mailed to all accommodation establishments that this by-law will impact stating the date and time of the Special Meeting and advising how to get on the agenda. This Special Meeting will also be advertised in the various media. In addition, an opportunity for website and mail submissions will be provided to others who do not wish to make an appearance at the Special Meeting.

It is expected that the by-law will be placed on the July 21<sup>st</sup> City Council meeting agenda for debate at second reading.

**RECOMMENDATION:**

That By-law 6909, being a by-law to impose a tax on accommodation of short duration be read a first time.

BY-LAW NO. 6909

BEING A BY-LAW OF THE CITY OF BRANDON to impose a tax on accommodation of short duration in order to support new events or initiatives in the areas of economic development, culture and recreation to be known as the "Accommodation Tax By-law."

WHEREAS *The Municipal Revenue (Grants and Taxation) Act*, R.S.M. 1987 c. T5 provides that the council of a municipality may pass by-laws imposing such forms of taxes as it deems advisable within the municipality including, without restricting the generality of the foregoing, taxes on persons who purchase hotel and motel accommodation;

AND WHEREAS a tax on accommodations of short duration within the City of Brandon is intended to generate revenue to promote and support new initiatives or events in the areas of economic development, culture and recreation but not to be used for capital or operating subsidies;

NOW THEREFORE the Council of The City of Brandon, in open session, duly assembled, enacts as follows:

1. SHORT TITLE

This by-law may be referred to as the Accommodation Tax By-law.

2. DEFINITIONS

- (a) "ACCOMMODATION" means lodging, and the right to use lodging, that is provided for consideration, whether or not the lodging is actually used.
- (b) "ACCOMMODATION TAX" means the tax imposed by Section 3 of this by-law.
- (c) "ALL-INCLUSIVE VACATION PACKAGE" means a vacation arrangement that, for a single price, includes at least one nights lodging in Brandon, round-trip transportation to or from Brandon and at least one other location, meals, drinks and entertainment.
- (d) "AUDIT AND FINANCE COMMITTEE" means a committee appointed by City Council in accordance with the provisions of Organizational By-law No. 6650 whose responsibilities include the hearing and making decisions on appeals heard pursuant to the provisions of this by-law.
- (e) "ESTABLISHMENT" means a business that provides accommodation at a particular location.
- (f) "LODGING" includes:
  - (i) the use of a bedroom, a suite of rooms containing a bedroom, or the use of a bed within a bedroom;
  - (ii) the use of one or more additional beds or cots in a bedroom or suite; and
  - (iii) food, drink, entertainment, use of equipment or facilities, and other amenities and benefits where these are included in the purchase price without additional charge to the purchaser.
- (g) "OPERATOR" means a person who sells, offers for sale, or otherwise provides accommodation.
- (h) "PURCHASE PRICE" means the price for which accommodation is purchased, including the price paid in money, the value of goods provided or services rendered or other consideration accepted by the operator in return for the accommodation provided, but does not include the goods and services tax imposed by the Government of Canada nor the retail sales tax imposed by the Province of Manitoba.
- (i) "PURCHASER" means a person who purchases accommodation.
- (j) "TAX COLLECTOR" means the Director of Finance of the City of Brandon and any employee of the City appointed by the Director to administer or enforce all or part of this by-law.
- (k) "TIME SHARE AGREEMENT" means lodging that is purchased pursuant to a written agreement, typically known as a time share agreement, that
  - (i) has a term of two or more consecutive years;
  - (ii) fixes the location and time of occupancy;
  - (iii) fixes the total price and the terms and conditions for the payment of the total price for the accommodation; and
  - (iv) provides for a cumulative number of nights of occupancy over the course of the agreement that is no more than thirty (30) nights.

### **3. APPLICATION OF TAX**

- 3.1** Subject to this section, a purchaser must, at the time of purchasing accommodation, pay an accommodation tax in the amount of 2% of the purchase price of accommodation provided for a continuous period of 30 nights or less whether provided in a hotel, motel, inn, housekeeping unit, lodging house, boarding house, rooming house, bed and breakfast establishment, resort, hostel, dormitory or any place in which accommodation is provided.
- 3.2** For greater certainty, the continuous period referred to in subsection 3.1 is not disrupted by the purchase of different rooms, suites, beds or other lodging in the same establishment in the course of the continuous period.
- 3.3** The accommodation tax imposed by subsection 3.1 does not apply to:
- (a) accommodation where the purchase price is \$30.00 or less per night or \$210.00 or less per week;
  - (b) accommodation provided to patients or residents in a hospital, a sanatorium, a facility designated by regulations under *The Mental Health Act*, a personal care home licensed under *The Health Services Insurance Act*, or a residential care facility licensed under *The Social Services Administration Act*;
  - (c) accommodation provided to a student by an educational institution while the student is registered at and attending the institution;
  - (d) accommodation supplied by employers to their employees in premises operated by or on behalf of the employer;
  - (e) a time-share agreement;
  - (f) tent or trailer sites supplied by a campground, tourist camp or trailer park;
  - (g) a hospitality room in an establishment that
    - (i) does not contain a bed;
    - (ii) is not a suite that contains a bed; and
    - (iii) is used for displaying merchandise, holding meetings, or entertaining;
  - (h) elements of an all-inclusive vacation package that
    - (i) do not take place in, or on the grounds of, the establishment providing the accommodation; and
    - (ii) can be reasonably distinguished from the elements of the all-inclusive vacation package that are related to the accommodation.
- 3.4** Where subsection 3.3(h) (all-inclusive vacation package) applies, the tax imposed by subsection 3.1 is imposed on that portion of the total purchase price of the all-inclusive vacation package that is reasonably attributable to the elements that are related to the accommodation.

### **4. TAX COLLECTED BY OPERATOR**

- 4.1** An operator must, as an agent for the tax collector, collect the accommodation tax from the purchaser at the time the accommodation is purchased.
- 4.2** The amount of the accommodation tax must be shown as a separate item or charge on a bill, receipt, invoice or similar document issued by the operator in respect of accommodation on which the tax is imposed.

### **5. TAX REMITTED AND STATEMENT SUBMITTED BY OPERATOR MONTHLY**

- 5.1** An operator must remit to the tax collector at the end of every month for each establishment the operator operates:
- (a) the amount of the accommodation tax that was collected by the operator during that month;
  - (b) the amount of the accommodation tax that should have been collected by the operator during that month; and
  - (c) the amount that was collected in error by the operator during that month and that has not been refunded to the purchaser.

- 5.2 An operator must, on a form provided by the tax collector, submit to the tax collector at the end of every month, a monthly statement for each establishment the operator operates, which statement must contain information reasonably required by the tax collector to administer or enforce this by-law including:
- (a) the total revenue earned by the establishment from the sale of accommodations during the month;
  - (b) the amount of revenue earned from the sale of accommodations during the month that is not subject to the tax;
  - (c) the amount of revenue earned from the sale of accommodations during the month that is subject to the accommodation tax;
  - (d) the total accommodation tax collected; and
  - (e) the total accommodation tax remitted.
- 5.3 Unless otherwise permitted by the tax collector, the obligation to provide a monthly statement applies even when no taxes have been collected.
- 5.4 The obligation under subsection 5.1 to remit taxes and the obligation in subsection 5.2 to submit a monthly statement must be met no later than the 20<sup>th</sup> day of the month following the month in which the taxes were payable and for which the monthly statement is applicable.

## 6. REFUNDS

- 6.1 The tax collector shall refund to an operator all or a portion of an amount that was collected as if it were the accommodation tax if, within one year of the collection and remittance of the amount, the operator provides proof that:
- (a) the amount was collected notwithstanding that it was not payable as an accommodation tax;
  - (b) the amount was remitted to the tax collector; and
  - (c) the amount has been refunded by the operator to the purchaser.
- 6.2 In complying with subsection 6.1, the tax collector may deduct the amount of the refund payable to the operator from the amount of the tax that the operator is required to remit under this by-law.
- 6.3 The tax collector shall refund to a purchaser all or a portion of an amount that was paid as if it were the accommodation tax if the purchaser applies for the refund within one year of the payment of the tax and provides evidence that:
- (a) the amount was paid notwithstanding that it was not payable; and
  - (b) the operator has refused to refund the amount to the purchaser;
- as long as the amount was remitted by the operator to the tax collector and has not been refunded to the operator by the tax collector.

## 7. USE OF ACCOMMODATION TAX FUNDS

- 7.1 In any given year, the net proceeds from this tax shall be deposited to the Accommodation Tax Reserve Fund and shall only be used to fund new incentives or events which promote and support enhanced economic development, culture and recreation.
- 7.2 To add further clarity, these funds will not be used to provide capital or operating subsidies to existing programs or facilities.
- 7.3 The net proceeds from the Accommodation Tax shall be defined as the gross revenue received from said tax less any refunds and costs of administering and enforcing this by-law.

**8. INSPECTION, AUDIT AND COLLECTION**

- 8.1 The tax collector or his designate may for the purpose of enforcing this by-law, enter any establishment to:**
- (a) collect the tax imposed by this by-law, if necessary;**
  - (b) audit the books, records and accounts of the operator for the purpose of ascertaining the amount of tax to be collected and remitted;**
  - (c) place in the lobby or other part of the establishment such notices regarding the tax as the tax collector may consider necessary;**
  - (d) require the operator to produce for inspection any book, contract, agreement, letter, paper or document relating to the establishment, the accommodation provided, or any other matter relating to this by-law; and**
  - (e) make and remove any copies of any documents or records required in the administration of this by-law.**

**9. APPEALS**

- 9.1 Any appeal of a decision made by the tax collector will be made to the Audit and Finance Committee who will conduct a hearing on the appealed matter within sixty (60) days of receipt of the written appeal.**
- 9.2 Written notification of their desire to appeal shall be directed to the Secretary of the Audit and Finance Committee outlining the reasons for appeal.**
- 9.3 The Secretary of the Audit and Finance Committee shall cause not less than five (5) days notice of the hearing to be served, by certified mail or registered mail, on the appellant at the address provided by the appellant at the time of registering the appeal.**
- 9.4 On the day and time set out in the appeal hearing notice, the Audit and Finance Committee shall receive representation from both Administration and the appellant and/or his agent. The hearing may be adjourned from time to time and may be resumed at such time and place as the Committee may decide.**
- 9.5 Upon hearing an appeal, the Audit and Finance Committee may rescind the decision of the tax collector, confirm the decision of the tax collector, or make such other order as the circumstances of each case it deems just.**
- 9.6 The Secretary shall communicate, in writing, the Committee's order to both the appellant and the tax collector as soon as is practical following the rendering of the Committee's decision.**
- 9.7 The order or decision of the Audit and Finance Committee is final and for further clarity, said order of decision is not appealable to City Council.**

**10. ADDRESS FOR SERVICE**

- 10.1 Where an address for service under this by-law is required, one of the following shall be used:**
- (a) if the person to be served is an operator, the street address of the establishment of which he or she is the operator;**
  - (b) if the person to be served is not an operator, the address provided by that person in communication with the tax collector.**

**11. INTEREST PENALTIES**

- 11.1 A penalty equivalent to the product of 5.0%, and the amount of the unremitted taxes shall be applied to taxes imposed by Section 3 that are required to be remitted by subsection 5.1 but have not be remitted by the date specified in subsection 5.4.**
- 11.2 Additional penalties will be imposed at a rate of 1.25% per month on the 1<sup>st</sup> day of each succeeding month.**

**12. OTHER PENALTIES**

**12.1 Every person who fails to comply with the provisions of this by-law is guilty of an offence and, in addition to being liable for payment of the penalty imposed by Section 10, is liable on summary conviction,**

- (a) for failing to collect or remit the tax, to a fine that is not less than double the amount of the tax that should have been collected and remitted to the City of Brandon;**
- (b) for failing to comply with other provisions of this by-law,**
  - (i) if an individual, to a fine not exceeding one thousand dollars (\$1,000.00) or to imprisonment for a term not exceeding six (6) months, or to both fine and imprisonment;**
  - (ii) if a corporation, to a fine not exceeding five thousand dollars (\$5,000.00).**

**13. COMING INTO FORCE**

**13.1 This by-law shall come into force and take effect on January 1, 2009.**

**DONE AND PASSED by the Council of The City of Brandon in a meeting duly assembled this day of A.D. 2008.**

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**MAYOR**

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**CITY CLERK**

Read a first time this	day of	A.D. 2008
Read a second time this	day of	A.D. 2008
Read a third time this	day of	A.D. 2008