Concerns for OUCH-tax Registrants

Note: This writing does not constitute legal advice, which should be sought from an attorney, nor does it constitute tax and accounting advice, which should be sought from a competent provider of such Services.
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Skimming from Lake Properties is Just Prioritizing the Order of Collection
The County Legislature and their minions, like the Treasurer, Bonnie Percy, seem to have pursued a skimming strategy of going after lakefront properties first, thinking that somehow the big bucks and the more frequent rentals would be there. But, make no mistake, they will go after every citizen of Yates County as they get around to mailing notices. Nevertheless, notice or not, the OUCH-tax law is already passed and it already applies to every citizen of the county, so whether they got around to sending you a "love-note" or not, you are already subject to it.

Everyone is Subject to the new Occupancy Law, whether they know it or not
Now "subject" should be a word left to royalty and those they reign over, and while we are seeing some of that too, the real issue is that, whether or not you got a letter, they have basically divided the whole county into those who rent, and those who don't. Before you say that you don't rent, don't be too sure. Remember those friends you stayed with in California last year (for free) who are now coming to stay with you? Technically your are reciprocating and your staying with them for "free" was a "consideration" and may make you liable to registering before they come, and paying an occupancy tax on their visit. Or perhaps you have guests who come to stay, take you out to dinner, bring a gift, help out around the house. Any of this could be called a "consideration" too, and make you liable, to the law, to the fine, to the jail time if you don't register and pay. Don't believe those who say "Oh, it won't happen." It's in the law, it could happen! The real issue is that the law and its implementation have virtually NO explanation. It is full of confusing ways to make mistakes and get punished. The message is just "Pay up or else!"

Almost Everything About the New Law is Unclear to SOMEBODY!
The big risk to most individuals is either registering or not registering without adequate information and understanding to make such a decision. The forms provided so far only add to the confusion. Be sure you understand ALL of the following before deciding to register or not register, to pay or not to pay. Also, the Legislature has redefined "hotel and motel" to include cottages. No one seems sure they have the right to do so, and almost no cottage owner would call their cottage a "hotel or motel."

There are confusing terms in the Law and confusing questions on the little card which Yates County sends out too, and on their registration forms. Important advice: get clarification before signing anything; i.e. don't sign it if you don't understand it. And if you get the clarification from the County (as you should!) GET IT IN WRITING!

Confusing questions asked by Yates County
on the postcard and on the Registration form

- **Identify the Property:** The first card arriving in the mail contains property tax bill numbers. Be sure you verify that the property you are being asked about is indeed the property you own.
- **The registration form asks for a Federal Tax Identification Number.** Now many private property owners won't have such a thing. Do you have to include your Social Security number? For each owner? What about the risk of identity theft? There isn't any assurance given about how you will be protected from identity theft as a result of the legislature's careless handling of files or providing information on its registrants under Freedom of Information demands. Be careful!
- **The Registration Form is designed for business, and that makes it very difficult for private property owners who don't see their renting as a business, but rather as just trying to make ends meet.** A sample registration form is on the website. For example, the form asks for a "Business Name," and what other "establishment" you own. Do they mean for rentals? Do they mean your home is an "establishment?" Do you have to list property in other counties? Or a business you might own or be a partner in that is not renting? Who knows? But how can you fill out a legal form without knowing the answer? Be careful!
- **How many weeks do you rent?** Be careful of this question. It isn't clear why they would ask such a question, or how anyone can really answer it without a crystal ball. Also, rentals of more than 29 days are exempt, so you don't want to be including exempt weeks in your answer, or do you? It is hard to know how to answer this question. Will they use it in the future if you rent for fewer weeks to "impute" rental weeks and charge you occupancy tax for rentals you never had? Be careful.
- **Ownership:** Do a husband and wife own a property as a "partnership" or as an individu
- **Do you use a rental agent?** What is the definition of a rental agent? Is a "referral" considered a "rental agent?" Why do they want to know? Maybe you do use a rental agent sometimes and not other times? Should you say yes or no? If you list somebody as a rental agent, are you locked into that situation if you want to change? Will they be getting correspondence you should be getting? The owner (operator) of the property is liable for the tax, not a rental agent. Even if you use a rental agent, you are still liable to report and pay the occupancy tax. The rental agent might collect it and give it to you, but how would they know who else you might have rented to and for how much in another week in the same period? They can't be liable, so whether or not you use a rental agent, chance are you will be the one who has to file, and risk the $1000 penalty AND/or a year in jail. An accountant might protect you from making some mistakes. Be careful!
- **Registration Form is very confusing:** For example, they ask how many rooms your have. Are bathrooms included and kitchen, or just bedrooms? How are rooms defined and figured and how can you answer that question without instructions? There are no instructions. Another confusing question is whether your place is a house or a cottage? Neither term is defined, so how do you know? And why does it matter? Be careful!
- **Do you own any other establishment?** Do they mean for rent? Only in Yates County or elsewhere? Are they talking about other property you own, or maybe your real business that is not a rental business? Be careful!
- **Date Business was started in Yates County:** Are you about to admit that your renting out your home is a "business" and are about to agree that it is? Will they next be saying you need business permits, inspections, fire escapes, etc. to come up to some business code? Should you put the date you bought the property, the very first rental you ever had or not? Be careful (this is a loaded question!)

Remember that you are saying you've examined all the information and are swearing it is true and complete! How can it be true and complete if you are confused?

Confusing Points in the Occupancy Tax Law which Require Clarification for Private Property Owners (Read the whole law on this website).

- **The law says the occupancy tax is on "any facility providing lodging on an overnight basis."** Neither "lodging" nor "overnight" are defined terms in the law. Why would the law say "on an overnight basis?" If it was meant to apply to all properties, wouldn't it just say "any facility providing lodging?" It would seem, and some property owners agree, that because they only rent for a week at a time, it isn't "overnight" since they won't accept a one night rental. Others say that "lodging" implies linens, laundry, maid service and more, and that they don't provide some or all of those services. Some folks argue one way, some the other. It's a good question to ask the Treasurer (address at the end of this summary) and to always get the answer in writing! Be careful! If you charge a tax that is not warranted you could be liable for your tenants' lawsuit to recover from you.
- **Campgrounds are exempt; and some other things too.** It isn't clear why campgrounds should be exempt, or if it is fair that it should be, but that's the way the law is written. However, if you let people bring their tents or campers and camp on your property, then you will want to be sure that rent is specified separately on the bill for that use, because apparently your tenants shouldn't have to pay occupancy tax on that rent. The law says "The term rent includes separately stated charges for the use of furnishings and equipment, maid services, towel and linen services, telephone service and other accommodations. Any charges for food, drinks, entertainment, valet, laundry service, theater ticket service, transportation, and administration do not constitute rent." Now does this sound like it in any way applies to cottages? No, the whole law was written for businesses, and cottage owners have to "decode" it. When you read the whole list of things that an occupancy tax is charged on, it seems that renting beach or off-street parking space, or lawns and picnic tables, and many other things aren't included, so you might want to have a ***very*** itemized bill so as not to have to charge occupancy tax on the whole thing. Why should you care, since the tenant is paying it? Well, you don't want the tenants to sue you later and say that you charged for things you shouldn't have charged for, right? Be careful!
- **Confusion on telephone charges.** The county claims that Occupancy Tax is due on telephone charges too. Many renters hold a separate telephone security deposit, deduct the charges and remit the remainder to the tenant up to a month later. The government is pretty strict about the kinds of taxes on telephone charges and it is not clear whether or not an Occupancy Tax can be levied on a phone bill. Get it in writing from the Yates County Treasurer, and be careful about charging on something you may have no right to charge.
- **Most rentals of 29 days or less are in the summer,** therefore if you are not renting for less than 29 days during the rest of the year, why would you need an Occupancy Tax

certificate all year long? Instead of paying an accountant to file four forms per year, consider getting the form (if you really have to do so) just before the first rental, and turning it in after the last rental, so you can minimize the paperwork during the rest of the year. Why increase your risk of non-compliance by having a certificate when you don't need it? And if you did get the chance to rent, say over a winter break for a skiing week, you have three days to reapply for the certificate to collect Occupancy Tax.

- **When does Occupancy Tax get paid?** We've asked a few lodging operators and they say that it is after people "occupy" that the occupancy tax is charge, so if they don't show up, there is no occupancy, and no occupancy tax. Hence, reservation funds aren't taxed until people do occupy, and should be due after the occupancy. That would seem to mean that reservation fees paid in advance don't have occupancy tax until the people show up and rent, and that there should be no occupancy tax charged on cancellation fees, but is this true? Also, it shouldn't be due on security deposits, or on repairs and cleaning expenses deducted from security deposits. Inexperienced cottage owners have to be very careful not to be paying MORE than they might owe, and thus liable for having charged people too much occupancy tax. Right now, the county's forms are far too lacking in detail to even be able to figure out, in the judgment of many folks. But it does seem that until people actually come to rent, reports and payments shouldn't be necessary. Also, if you extend your last renter of the season to a month, (or the first one to a month) when the unit would otherwise be unoccupied, it would seem then no Occupancy Tax would be due on that rental at all, even if they chose not to use the cottage for that extra time. This is another point to clarify, and may help to minimize tax paid.
- **Exemption this year for renters who made reservations with a deposit before the end of the year:** It would seem that anybody who asked you to hold a date for them before January 1, 2008 and gave a deposit, no matter how minimal, would be exempt from paying occupancy tax this year. That is good news (if there is any good news at all in all this bad news). You apparently need not have had the lease executed with them, so any deposit (cash or check, or "other consideration") to hold the week for the coming summer would exempt that tenant. We need some clarification of "other consideration" because it would seem that keeping good relations with repeat renters would indeed be a consideration. The awkward situation this caused for many property owners was having leases or offers out to tenants before receiving notice of the Occupancy Tax, which had no mention of an Occupancy Tax. It is not clear, in court, if the county would prevail by issuing the first week of December, a Law with provisions retroactive to December 1, 2007.
- **Required Information for Reports:** Yates County continues to keep a mystery just what the reporting forms will entail. Requests for copies have not been honored, and yet knowing what is required may well be one of the inputs for deciding whether or not to rent this year. The law does not seem to require that the parties enter into leases, but it isn't known if there are leases if they must be provided or not. It is possible that the landlord will want to enter into separate leases, one for occupancy and one for all other transactions. Since we have no information about what will ultimately be required, it is impossible to know what information must be required of a tenant. For example, will you be required to secure identification for each tenant? We don't know. We are all at risk of finding out three years later that we didn't ask for the right information. The County's answer? $1000 AND/or a year in jail! Be careful (but of what?)

- **Record Keeping:** Landlords are supposed to keep records "available for inspection and examination at any time upon demand." Suppose you rent your property. Are they going to come to get the records from the tenants? Do you have an obligation to tell them where you will be? Can you drive out of the County with the records in the trunk of your car? The law lets them come to your house in the middle of the night for records. There is nothing about reasonable notice or during normal business hours (but you are not in business, so what would reasonable hours be anyway?)

In summary, both the registration card and the registration form, as well as the Summary of the Law and the Law itself are very confusing and ill-explained. If the county had intended to write words guaranteed to collect multiple $1000 fines under threat of jail they probably couldn't have done a better job. The landlord must be very careful, and should get ALL answers from the Treasurer or her designee IN WRITING. Do NOT trust telephone conversations, as whatever you are told will not be enforceable and you can not rely on it. Get Mailing receipts; keep copies!

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