

# **MARKETING LEVY BY-LAW**

## **of the TOWN OF PORT HAWKESBURY**

Pursuant to the *Cape Breton Island Marketing Levy Act*

### **Short Title**

1. This By-law may be cited as the Town of Port Hawkesbury Marketing Levy By-law.

### **Definitions**

2. In this By-law:
  - (a) "accommodation" means a commercial property that
    - (i) is a building or part of a building that is a hotel, motel, inn or other accommodation providing rental units, or
    - (ii) is a cottage or cabin used mainly in the accommodation of the traveling or vacationing public,  
  
and consists of ten or more rental units or rooms
  - (b) "Municipality" means Town of Port Hawkesbury.
  - (c) "Operator" means a person who, in the normal course of the person's business, sells, offers to sell, provides and offers to provide accommodation in the Municipality.

- (d) "Purchase Price" means the price for which accommodation is purchased, including the price in money, the value of services rendered and other consideration accepted by the operator in return for the accommodation provided, but does not include the goods and services tax.

### **Application of Levy**

3. (1) A marketing levy is hereby imposed in the Municipality, the rate of which shall be 2.0% of the purchase price of the accommodation.
- (2) The Levy imposed under this By-law, whether the price is stipulated to be payable in cash, on terms, by installments or otherwise, must be collected at the time of the sale on the total amount of the purchase price and must be remitted to the Municipality representative at the prescribed times and in the prescribed manner;
- (3) If a person collects an amount as if it were a levy imposed under this By-law, the person must remit the amount collected to the Municipality representative at the same time and in the same manner as levy collected under this By-law.

### **Exemption from the Levy**

4. (1) The marketing levy shall not apply to:
- (a) A person who pays for accommodation for which the daily purchase price is not more than Twenty Dollars (\$20.00);
- (b) A student who is accommodated in a building owned or operated by a post-secondary educational institution while the student is registered at and attending a post-secondary educational institution;
- (c) A person who is accommodated in a room for more than thirty consecutive days;  
or
- (d) A person and the person's family, accommodated while the person or a member of the person's family is receiving medical treatment at a hospital or a provincial health-care centre or seeking specialist medical advice, provided the person provides to the operator a statement from a hospital or provincial health-care centre that the person or a member of the person's family is receiving medical treatment at the hospital or centre or from a physician licensed to practice medicine in the Province of Nova Scotia that the person or a member of the person's family is seeking specialist medical advice and as a result thereof the person or a member of the person's family is in need of and the duration of the accommodation.

- (2) This By-law and the marketing levy imposed hereby shall be applicable to all licensed accommodation in the Town of Port Hawkesbury.

#### **Registration of Operator**

5.
  - (1) Every operator of a facility providing accommodation to which this By-law applies shall apply for and be issued a registration certificate by the Municipality.
  - (2) Where an operator carries on business at more than one place, he shall obtain a registration certificate in respect of each individual place of business;
  - (3) The registration certificate shall be displayed in a prominent place on the premises;
  - (4) Where an operator changes his address, he shall forthwith return his registration certificate to the Municipality for amendment;
  - (5) Where an operator changes the name or nature of his business, he shall forthwith return his registration certificate to the Municipality for a new one;
  - (6) Where an operator ceases to carry on business in respect of which a registration certificate has been issued, the certificate shall thereupon be void, and he shall return the same to the Municipality within 15 days of the date of discontinuance;
  - (7) Where a registration certificate is lost or destroyed, application shall be made to the Municipality for a copy of the original;
  - (8) A registration certificate granted under subsection (1) is not transferable.

#### **Return and Remittance of Levy**

6.
  - (1) The Municipality may at any time require a return reporting sales and levy collected by

any person selling accommodation, such return to cover any period or periods;

- (2) Subject to the provisions of subsection (1), unless otherwise provided, all operators shall make separate quarterly returns to the Municipality;
- (3) A separate return shall be made for each place of business, unless a consolidated return has been approved by the Municipality;
- (4) The returns by operators shall be submitted and the levy shall be remitted to the Municipality by the 15<sup>th</sup> day of the month following the collection of the levy by the operator;
- (5) If an operator during the return period has collected no levy, he shall nevertheless make a report to that effect on the prescribed return form;
- (6) Where an operator ceases to carry on or disposes of his business, he shall make the return and remit the levy collected within 15 days of the date of discontinuance or disposal.

### **Records**

7. (1) Every operator shall keep books of account, records and documents sufficient to furnish the Municipality with the necessary particulars of:
  - (a) Sales of accommodation;
  - (b) Amount of levy collected; and
  - (c) Disposal of levy.
- (2) All entries concerning the levy in such books of account, records and documents shall be separate and distinguishable from other entries made therein.
- (3) Every operator shall retain any book of account, record or other document referred to in this section until the Municipality authorizes its destruction;
- (4) Where a receipt, bill, invoice, or other document is issued by a person selling accommodation, the levy shall be shown as a separate item thereon;

### **Calculation of Levy**

8. Where an operator sells accommodation in combination with meals and other specialized

services for an all-inclusive package price, the purchase price of the accommodation shall be deemed to be the purchase price of the accommodation when such accommodation is offered for sale in the same facility without such specialized services.

#### **Refund of Levy Written off**

9. (1) The Municipality may refund to an operator who sells a portion of the amount sent by the operator to the Municipality in respect of levy payable on that sale under this By-Law if:
  - (a) the operator, in accordance with this By-Law, remits the levy required under this Act to be levied and collected for the sale,
  - (b) the purchaser subsequently fails to pay the operator the full amount of the consideration and levy payable on that sale, and
  - (c) the operator writes off as unrealizable or uncollectible the amount owing by the purchaser.
- (2) An operator may deduct the amount of the refund payable to the operator under this section from the amount of levy that the operator is required to remit under this By-Law;
- (3) If an operator who has obtained a refund under subsection (1) or made a deduction under subsection (2) recovers some or all of the amount referred to in subsection (1)(c) with respect to which the refund was paid or the deduction was made, the operator must add an amount to the levy to be paid or remitted by the operator under this By-Law with respect to the reporting period in which the recovery was made.

#### **Refund of Levy Collected in Error**

10. (1) If the Municipality is satisfied that a levy or a portion of a levy has been paid in error, the Municipality shall refund the amount of the overpayment to the person entitled;
- (2) If the Municipality is satisfied that an operator has remitted to the Municipality an amount as collected levy that the operator neither collected nor was required to collect under this By-Law the Municipality must refund the amount to the operator;

#### **Claim for Refund**

11. (1) In order to claim a refund under this By-Law, a person must:

- (a) submit to the Municipality an application in writing signed by the person who paid the amount claimed; and
  - (b) provide sufficient evidence to satisfy the Municipality that the person who paid the amount is entitled to the refund;
- (2) For the purposes of subsection (1)(a) if the person who paid the amount claimed is a corporation, the application must be signed by a director or authorized employee of the corporation.

### **Interest**

12. Interest payable under the By-Law shall be payable at the rate of 4% above the prime rate as set by the Municipality's banker calculated on a daily basis.

### **Inspection, Audit and Assessment**

13. A person appointed by the Municipality may enter at a reasonable time the business premises occupied by a person, or the premises where the person's records are kept:

- (a) to determine whether or not
  - (i) the person is an operator, or the premises are accommodation within the meaning of this By-Law, or
  - (ii) this By-law is being and has been complied with, or
- (b) to inspect, audit and examine books of account, records or documents.

### **Offence**

14. A person who contravenes any provision of the By-Law is guilty of offence punishable by summary conviction and on conviction is liable:
- (a) on a first conviction, to a fine of not less than \$500 and not more than \$1,000; and
  - (b) for a subsequent conviction for the same or another provision of this By-Law, to a fine of not less than \$1,500 and not more than \$5,000.

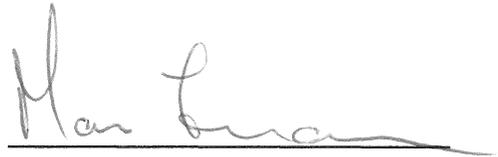
**Administration of By-law**

15. This By-Law shall be administered on behalf of the Municipality by the Chief Administrative Officer or any person designated by the Chief Administrative Officer.

**Effective Date**

16. This By-law shall take effect from the 29 day of December, 2010

**PASSED AND ADOPTED** by a majority of the whole Council at a duly called meeting of the Council of the Town of Port Hawkesbury held on Dec 20, 2010.



**CHIEF ADMINISTRATIVE OFFICER**