





**CITY MANAGER'S OFFICE – INTERNAL AUDIT**

DATE: May 2, 2014

TO: KAREN BRADLEY, Assistant Controller, Finance Department

THROUGH: RENENA SMITH, Assistant City Manager 

FROM: BOB KOURY, Principal Internal Auditor   
Budget and Management Studies - Internal Audit

SUBJECT: FINAL FOLLOW-UP REVIEW REPORT – TRANSIENT  
OCCUPANCY TAX (ROOM TAX) PROGRAM

Attached is the Final Follow-Up Review Report related to the Limited Scope Audit of the City's Transient Occupancy Tax (TOT) Program Report issued on October 2, 2013. This follow-up review was performed in accordance with AO 1-12 and Government Auditing Standards.

Internal Audit performed follow-up procedures, as considered necessary, and determined the current status of the original eight (8) audit recommendations to be as follows:

Implemented – 7  
In Progress – 1

The Finance Department and Business Tax Division are commended for their efforts in the implementation of the audit recommendations noted in this report. We want to also thank the staff for their assistance and cooperation during the course of this follow-up review. If you have any questions, please do not hesitate to contact Bob Koury, Principal Internal Auditor, at 621-7072.

**Attachments**

cc: Ashley Swearengin, Mayor  
City Council  
Bruce Rudd, City Manager  
Georgeanne White, Chief of Staff, Mayor's Office  
Douglas T. Sloan, City Attorney  
Kim Jackson, MA III, Finance Department  
Connie Alfaro, Revenue Supervisor, Business Tax Division  
Rick Kuffel, Tax/Permit Representative, Business Tax Division  
Timothy Tonel, Accountant-Auditor I, Business Tax Division

## **Introduction**

The primary purpose of this limited scope audit was to review and evaluate the overall adequacy of compliance by a sample of the City's motels and hotel with the City's Transient Occupancy Tax Ordinance Code, Article 6, Sections 7-601 through 7-619. A copy of this Ordinance Code is attached to this report as **Exhibit A** for reference purposes.

The audit procedures included, but were not limited to: a) the examination of relevant TOT monthly tax returns and related documents filed with the City's Business Tax Division by a sample of motels and hotels operating in the City of Fresno, b) "field audits" were conducted by the Principal Internal Auditor and an Accountant-Auditor from the Business Tax Division at the sampled motels and hotels, and c) additional tests of records and audit procedures were performed as considered necessary under the circumstances. Limited review procedures were also performed as related to both of the Collection Agencies who are providing contractual collection services for the City specific to the City's delinquent TOT.

When a new motel/hotel is constructed in the City of Fresno, the business owner is required to register with the City Business Tax Division and to apply for a "Certificate of Authority" in order to assess and collect TOT. The Business Tax Division maintains a TOT billing database and related listing of all motels and hotels who have "registered" with the City in order to operate their business and assess, collect and remit the appropriate TOT to the City.

Monthly reporting and payment forms are sent to each of the motels and hotels in the Business Tax database, and they then have twenty (20) days to report their prior months' activities and to pay the appropriate TOT. The current TOT percentage is 12% of the monthly taxable room receipts as per the City's current Master Fee Schedule. A completed and signed tax return must also be filed even if no tax is due.

**Note:** For the fiscal year ending June 30, 2013, the City received approximately \$9,390,000 in TOT (room tax) revenues for the General Fund per the City's PeopleSoft Financial System.

## **Conclusion**

Overall, the Finance Department and Business Tax Division staff should be commended for their efforts in the administration and recordkeeping related to the City's TOT Program, especially with the limited staff they have due to budget reductions and constraints that has occurred these past several years. However, there are several areas noted during the course of this limited scope audit for improved recordkeeping and enhanced efforts to ensure compliance with the City's TOT Ordinance Code by all motels and hotels operating in the City of Fresno. Hopefully, with the recent hiring of a new Accountant-Auditor position in the Business Tax Division, the "In-house Auditing" of the TOT Program by this individual will enhance and strengthen this Program and the related TOT being reported and remitted to the City.

## **Audit Scope, Findings and Recommendations**

The audit period and related tests of TOT records was performed for the period December 2012 through June 2013. The Business Tax Division's "TOT Active Accounts (Motels and Hotels) Listing" as of May 24, 2013, reflected a total of 94 Accounts. Internal Audit then selected a sample of 10 motels/hotels from this listing (approximately 10%) to perform TOT "field audits".

Input of suggested motels and hotels for audit was also provided to Internal Audit by the Business Tax Division staff as part of this sample selection.

The ten (10) sampled motels and hotels that “field audits” were conducted on during the month of August 2013, are as follows:

Calwa Hotel – 3978 E. Calwa Avenue, Fresno, CA 93725  
Astro Motel – 3393 N. Parkway Drive, Fresno, CA 93722  
El Muir Motel – 2339 S. ‘G’ Street, Fresno, CA 93721  
River Park Inn – 6090 N. Blackstone Avenue, Fresno, CA 93710  
Red Roof Inn – 4141 N. Blackstone Avenue, Fresno, CA 93726  
Days Inn – 4061 N. Blackstone Avenue, Fresno, CA 93726  
Motel 6 #0006 – 4245 N. Blackstone Avenue, Fresno, CA 93726  
Vagabond Inn – 2570 S. East Avenue, Fresno, CA 93706  
Residence Inn – 5322 N. Diana Street, Fresno, CA 93710  
Piccadilly Inn Airport – 5115 E. McKinley Avenue, Fresno, CA 93727

Following are the various audit findings noted during this limited scope audit. Audit recommendations are also proposed by the Principal Internal Auditor to City Management for improved internal controls, recordkeeping practices and compliance with the City’s TOT Ordinance Code by all appropriate parties.

### **Motels and Hotels – “Registration Forms” – Contact Information Out of Date**

The contact information for the 10 sampled motels and hotels was provided to Internal Audit by the Business Tax Division for purposes of scheduling the TOT “field audits”. The source of this contact information was from the “Transient Room Tax Registration” forms on file in the Business Tax Division, which included the name of the motel/hotel, the owner/manager name, and contact phone number.

During the course of the “field audits”, it was noted that the contact name and/or phone number for more than half of the 10 sampled motels/hotels was out of date and not current. One motel’s name had been changed and did not agree to the original registration form nor the “Certificate of Authority” displayed at the motel’s location.

#### **Audit Recommendation**

1. The Business Tax Division should send out new “Transient Room Tax Registration” forms to all motels and hotels operating in the City of Fresno to ensure the accuracy of the current motel/hotel’s name, owner/manager’s name, and contact phone number. This can be done in conjunction with the sending out of the monthly TOT tax return forms to all motels and hotels in the Business Tax Division’s current database. New “Certificates of Authority” should then be re-issued to all applicable motels and hotels operating in the City for compliance with the TOT Ordinance Code.

#### **Original Management Response to Audit Recommendation 1**

Finance agrees with this recommendation.

Finance was recently fortunate enough to add an Accountant-Auditor position to its team of Business Tax professionals and has been training this individual to take on the role of Business Tax and TOT auditor. Under the gracious tutelage of Bob Koury and this limited-scope TOT

audit, this individual is now better prepared to take on many of the recommendations as outlined in this report. Finance agrees that we should, as soon as possible, take on the task of updating our data base with the most current hotel/motel information available, including the hotel owner/manager's name and contact information. This can best be accomplished, as recommended, by sending out new "Transient Room Tax Registration" forms along with the monthly TOT forms.

The economic crisis of the past several years has greatly impacted the hotel/motel industry and as a result, many have changed hands over the past several years, sometimes more than just once within a year. Now that the economy appears to be stabilizing and perhaps the hotel/motel business as well, the present would be an excellent time to update our records. Our new Accountant-Auditor will enable Finance to move forward on this recommendation. We anticipate that over the course of the next three to six months we should be able to update the City's data base with more timely and accurate information. The City has also been working closely with the independent staff of the Convention Center Bureau in their efforts to collect TBID receipts and as a result a sharing of contact data has taken place whenever possible. This should also help to supplement this process.

### **Management Follow-up Response/Status of Audit Recommendation 1 - Implemented**

Business Tax has updated the "Transient Occupancy Tax Registration" form with a modernized 'look' including the current hotel's name with the contact information of owner/manager's name(s), partner's information, email and phone number. We have also included a link to the Municipal Code Sections 7-601 through 7-619. An explanation letter and the new form were sent to all certificated hotels/motels/Inns operating in the City in early April 2014.

After the motels/hotels/Inns return the registration form and the Business Tax/TOT database is updated for current information about the establishment, new 'Certificates of Authority' are being sent out for proper display.

### **Transient Occupancy Tax Ordinance Code and City's Tax Return Form**

The City's Transient Occupancy Tax Ordinance Code, Article 6, Sections 7-601 through 7-619 were significantly revised and approved by the City Council, effective October 5, 2012. This Ordinance Code specifically guides and regulates all motels and hotels operating in the City of Fresno as related to the City's TOT Program and the compliance thereof by all such motels and hotels in our City.

During the course of our TOT "field audits", all ten sampled motels and hotels were not familiar with nor aware of this City Ordinance Code as a motel or hotel operator within our City. The most significant revisions to this Ordinance Code that became effective on October 5, 2012, that all motel and hotel operators should be well aware of pertained to Section 7-608 – Penalties and Interest related to their TOT tax returns.

It was also noted that the current "Transient Occupancy Tax Return" form (copy attached as **Exhibit B** to this report) being used by the City's Business Tax Division has not been updated in accordance with the Ordinance Code revisions effective October 5, 2013. Section 7-608 was expanded with additional collection mechanisms and processes related to unpaid and delinquent TOT taxes owed the City, i.e. subsections (f) – (i) of this Ordinance Code Section were added

effective October 5, 2013. However, the second page of the current TOT Tax Return Form does not include these revised Ordinance Code Sections.

#### Audit Recommendations

2. The City's Business Tax Division should, in the most cost effective manner, provide a copy (electronic copy preferred) of the City's updated TOT Ordinance Code to all active motels and hotels operating in the City of Fresno for enhanced compliance with this Code and possibly increased tax revenues. This can be done in conjunction with the sending out of the monthly TOT tax return forms to all motels and hotels in the Business Tax Division's current database.
3. The current "Transient Occupancy Tax Return" form (second page) should be updated as soon as possible to include all appropriate revised Sections of the Ordinance Code that became effective October 5, 2013, specific to Penalties and Interest. The City Attorney's Office may need to be consulted with by the Finance Department in the implementation of this recommendation.

#### **Original Management Response to Audit Recommendations 2 & 3**

Finance agrees with this recommendation - with clarification.

The Municipal Code was fairly recently updated and revised as a result of limitations it created for the Convention Center Bureau in its efforts to collect delinquent TBID amounts owed. The Municipal Code was written exclusively for TOT long before TBID was even thought of and as a result it restricted the City from sharing relevant information with the CVB which would enable their collection efforts. At the same time the Municipal Code was being revised for this purpose, other provisions were added that would facilitate the City in its collection effort for TOT.

Upon the adoption of the new Municipal Code language, several inconsistencies were noted that required consultation with the City Attorney's Office in order to ascertain if the corrections were more clerical in nature or if they would require a return to Council. For years the Municipal Code has allowed for Penalties and Interest assessments related to TOT delinquencies. During the course of revising the Municipal Code this rate was changed from one-half of a percent to "one percent per month on the amount of the tax, exclusive of penalties, from the date upon which the remittance first became delinquent until paid". (Section 7-608 (d). In Section 7-609 (e), the intent had been to revise that rate from one-half of a percent to one percent. As a result of a typing error, instead the rate is reflected as one-half of one percent per month. In speaking with the City Attorney, he advised that this section covers when the Tax Administrator allows for a one month extension for the filing of TOT returns for good cause and that the rate kicks in only when the extension period lapses and the filing then becomes delinquent. These two rates are not inconsistent, and may be left as is until the next revision to the code.

The last issue that needs to be resolved is whether or not the penalties and interest aspects of this code section need to be presented in the Master Fee Schedule. They do not appear to have ever been included in the Master Fee Schedule. The question is whether the penalty and interest fees should be added to the Master Fee Schedule before the Municipal Code is sent out electronically or otherwise. These issues have also held up the revision to the TOT Return itself.

After the Municipal Code TOT sections have been finalized, Business Tax will offer options to obtain the code electronically and by referral to the City Clerk's office if a hard copy version is desired.

### **Management Follow-up Response/Status of Audit Recommendations 2 & 3 - Implemented**

The Business Tax Division of Finance has updated the Transient Occupancy Tax Renewal document to now include, on the back of the renewal form, an official 'link' to the revised Fresno Municipal Code Sections 7-601 through 7-619 to obtain the MC Sections electronically or direction to visit the City Clerk for a hard copy. The Business Tax FAQ section of the City's website is also in the process of being updated to inform taxpayers of the changes.

Finance is in the beginning stages of working with the City Attorney's Office to determine if the penalties and interest need to be presented in the Master Fee Schedule. And if that is the case, the Master Fee Schedule updates are not due to BMSD until sometime in September or October.

### **Non-Filing of TOT Tax Returns**

Only one motel out of the ten sampled motels was noted as having not filed any TOT tax returns – this was the Calwa Hotel at 3978 E. Calwa Avenue. The Hotel manager simply stated that he had no "taxable receipts" for purposes of completing and filing a TOT tax return with the Business Tax Division. However, a completed and signed monthly return must still be filed even if no tax is determined to be due by the motel or hotel manager.

#### **Audit Recommendation**

4. The City's Business Tax Division should formally communicate with the Calwa Hotel and direct them to commence the immediate filing of their monthly TOT tax returns, even if they report no "taxable receipts". These type TOT returns can then be subsequently audited via a more thorough "field audit" to verify the accuracy of the amounts reported on their monthly returns.

### **Original Management Response to Audit Recommendation 4**

Finance agrees with this recommendation.

Since the draft TOT audit report was prepared on September 3, 2013, the Calwa Hotel has filed all missing monthly TOT tax returns for 2013 and is current through July with their reporting.

### **Management Follow-up Response/Status of Audit Recommendation 4 - Implemented**

Finance determined that the Calwa Hotel has been misclassified as a 'hotel / motel' for many years. A letter was sent to Mr Mohamad Abdulla (owner) stating the reclassification of the Business Type for his establishment from Hotel to Lodging/Boarding Services. This will result in the conclusion of the taxpayer being required to return the TOT tax returns for "no taxable receipts". The Calwa Hotel has not experienced transient activity in at least 8 years based upon their reporting history. Mr Abdulla will still be responsible for reporting gross rents, non-refunded deposits and other services fees as charges for the purpose of paying the appropriate business tax.

### **Non-Existent and/or Non-Displayed "Certificate of Authority" or Current Business License**

Section 7-607 of the City's TOT Ordinance Code specifically states that the "Certificate of Authority" issued to all motels and hotels "*shall be prominently displayed therein so as to be seen*

*and come to the notice readily of all occupants and persons seeking occupancy.”* In addition, this Section states that *“no person or entity shall operate a motel or hotel in this City without a current and valid Certificate of Authority”*.

In conjunction with verifying compliance with this Section of the City’s TOT Ordinance Code, we also verified the existence and proper display of the most current City’s Business License in each of the motel or hotel lobbies.

As a result of this audit procedure/observation during our “field audits”, seven of the ten sampled motels/hotels either did not have or was properly displaying either their “Certificate of Authority” or their most current Business License, i.e. “9/30/13”, as follows:

- Calwa Hotel – 3978 E. Calwa Avenue, Fresno, CA 93725
- Astro Motel – 3393 N. Parkway Drive, Fresno, CA 93722
- Red Roof Inn – 4141 N. Blackstone Avenue, Fresno, CA 93726
- Motel 6 #0006 – 4245 N. Blackstone Avenue, Fresno, CA 93726
- Vagabond Inn – 2570 S. East Avenue, Fresno, CA 93706
- Residence Inn – 5322 N. Diana Street, Fresno, CA 93710
- Piccadilly Inn Airport – 5115 E. McKinley Avenue, Fresno, CA 93727

#### Audit Recommendation

5. The City’s Business Tax Division should formally follow-up with the above motels and hotels to ensure they obtain and properly display their most current “Certificate of Authority” and Business License so as to be seen and come to the notice readily of all occupants and persons seeking occupancy at their respective motel or hotel.

#### **Original Management Response to Audit Recommendation 5**

Finance agrees with this recommendation.

It is the City’s intent to begin the process of conducting onsite TOT audits in Fiscal Year 2014. The first priority in advance of on-site inspections for the specific purpose of verifying the proper display of the “Certificate of Authority” and Business License is to ensure that the City has proper and accurate hotel/motel names and addresses, as well as the most current owner/manager name and phone number. There may be instances where upon the receipt of the updated contact information, it may be determined that the Certificate of Authority and/or Business License is not correct and needs to be updated prior to it being displayed. The City would like to update this information first and process new documents as necessary before they are displayed.

In addition, should the City not receive a response to its mailing out of new “Transient Room Tax Registration” forms, an onsite visit may enable the City to obtain this information directly. There may however still be instances when the City may need to research independently the ownership and contact information should a hotel/motel operator not be cooperative or not be available. In conjunction with these onsite visits to obtain updated information, a plan of action can be developed that may include procedures to gather current information as well as to conduct a TOT audit simultaneously.

#### **Management Follow-up Response/Status of Audit Recommendation 5 - Implemented**

As stated in the Management Response to Audit Recommendation 1, new TOT Registration forms have been mailed to all hotels/motels/Inns asking for them to update the names, addresses,

current owner/manager name and phone number. A new Certificate of Authority will be mailed to all TOT tax payers who comply with the request for registration update. For all hotels/motels/Inns not responding to the request, the Division will ensure an onsite visit be scheduled to make certain we maintain accurate and up-to-date records in the City's database.

### **Review of Outside Collection Agency Contracts and Delinquent TOT Accounts**

The City of Fresno, via the Finance Department, currently contracts with two separate outside Collection Agencies – RSI Enterprises, Inc. and Data-Central Collection Bureau, LLC. Several different types of City-wide delinquent accounts receivable are assigned to either of the two Collection Agencies by appropriate City Departments. However, only delinquent TOT accounts assigned to these outside agencies by the Business Tax Division and the related account activities and balances are being addressed in conjunction with this limited scope audit. Both Collection Agency Contracts have been formally extended by the City through May 5, 2014.

Basically, if any motel or hotel operating in the City fails to comply with any TOT tax deficiency determination notice from the Business Tax Division, the delinquent account and amount is sent to one of the two approved collection agencies for collection purposes.

### **Data-Central Collection Bureau – Non-Compliance With Insurance Requirements**

The “Certificates of Insurance” provided to Internal Audit by this collection agency only addresses the “Errors and Omissions” and “General Liability” insurance requirements as stipulated in Section 8.(a) and Exhibit B of the City/Data-Central Collection Bureau Contract, i.e. no coverage is reflected for Automobile and Worker’s Compensation Insurance. The “Other Insurance Provisions” section of Exhibit B to this contract must also be complied with by this contractor, unless there is something in writing from the City Finance Department or Risk Management Division that “waives or releases” this contractor from the other contractual insurance requirements.

### **Audit Recommendation**

6. The Finance Department should immediately request the Data-Central Collection Bureau to obtain and maintain all required insurance coverage and limits as stipulated in the collection agency contract for contract compliance purposes. The City’s Risk Management Division should be consulted by the Finance Department regarding this item if considered appropriate.

### **Original Management Response to Audit Recommendation 6**

Finance agrees with this recommendation with a caveat.

Finance has attempted to obtain the required insurance coverage and limit information but has been experiencing more and more difficulty in obtaining information from Data-Central Collection Bureau, not only related to the insurance coverage and limit information, but in communications with them as it relates to their collection efforts on behalf of the City. It is the understanding of Finance that Bob Koury, Principal Internal Auditor, also experienced difficulties with Data-Central in their lack of responsiveness to his questions and requests for information during the course of his audit. Although Data-Central was willing and did sign the contract extension, it is the decision of Finance to discontinue the services of Data-Central and to begin the work on going through an RFP process to find and hire at least two responsive vendors for collection efforts on behalf of the City. Until such time as the RFP process is completed, Finance



will be utilizing the services of RSI exclusively and will no longer do business with Data-Central nor pursue insurance certificates from them.

### **Management Follow-up Response/Status of Audit Recommendation 6 - Implemented**

The Finance Department made a determination not to use or send any new business to the Data Central Collection Bureau for at least the last three years even though they signed the last few one year extension letters – the last being in August 2013. The company has also been non-compliant in paying their own Business Taxes!

#### **Delinquent Accounts and Collection Agency Activities/Balances**

As of August 1, 2013, RSI Enterprises, Inc. was still pursuing collections of various delinquent TOT accounts that had been assigned to them by the Business Tax Division. The total outstanding balance of these delinquent TOT accounts as of August 1, 2013, was \$19,778, and represented three separate motels. This collection agency receives a 20% collection fee for all delinquent TOT account monies they collect on behalf of the City.

When the Data-Central Collection Bureau was requested to provide data related to the delinquent TOT accounts assigned to them by the Business Tax Division and the current ending balances as of the audit date, they simply indicated that *“no accounts had been assigned to them since 2011 by the Business Tax Division”*. Therefore, there is no delinquent account data for purposes of this TOT audit to report on accordingly for this collection agency. Note: This collection agency receives a 14% collection fee for all delinquent TOT account monies they collect on behalf of the City, when applicable.

#### **TOT Ordinance Code Revisions Related to Unpaid and Delinquent Accounts**

Effective October 5, 2012, the City’s TOT Ordinance Code was significantly revised. Among other revisions, it specifically enhanced the collection “tools” and processes related to delinquent TOT taxes owed by the motels or hotels operating in the City of Fresno, i.e. sub-sections (f) – (i) were added to Section 7-608 – Penalties and Interest, of the Ordinance Code (see **Exhibit A** of this report).

It is understood that this Ordinance Code revision was effective only ten months ago and that the Finance Department has been under-staffed for a long time now. However, any additional or enhanced collection “tools” and processes that can be implemented by the Business Tax Division to generate additional tax revenue to the City is considered appropriate to pursue.

#### **Audit Recommendation**

7. The Finance Department – Business Tax Division should consider implementing the enhanced collection “tools” as provided by the revised TOT Ordinance Code Section 7-608 for all delinquent tax accounts and for increased revenues for the City’s General Fund. The City Attorney’s Office should be consulted with by the Finance Department in the implementation of this recommendation.

### **Original Management Response to Audit Recommendation 7**

Finance partially agrees with this recommendation.

While Finance has every intention of beginning the process of implementing enhanced collections efforts, it is cautious with respect to initiating the “collection tools” recently added to the updated Municipal Code particularly in the area of property liens, warrants or sale and seizure of real property. The City must take extra care and caution and not rambunctiously begin filing liens and warrants without first engaging in in-depth due diligence to ensure that the actual property owner is aware of the delinquent account situation. Many of the hotels/motels in Fresno are not owned by those individuals managing the property. The actual property owners may very well be absentee owners and may also be completely unaware of the delinquent accounts. The new and enhanced collection tools are “last resort” type of measures that should only be exercised after all other efforts have been exhausted.

Until recently, the City had limited staffing to conduct field audits and to perform consistent and repeated collection efforts. Although collection agencies were engaged to assist the City, they too cannot and do not focus solely on the City’s accounts. As the new Accountant-Auditor becomes more familiar with collection law and the efforts that the City can engage in, earnest collection efforts by the City will ensue. Only after all of these efforts are exhausted will the City contemplate the use of liens, warrants or sale and seizure of real property but not before identifying legal ownership.

The Convention Center Bureau is currently in the process of pursuing one hotel/motel for delinquent TBID payments through the lien process. This will be observed by the City and used as a test of how the process should be handled and what pitfalls to avoid.

#### **Management Follow-up Response/Status of Audit Recommendation 7 - Implemented**

The Business Tax Division’s Tax Permit Representative, Mr Rick Kuffel, has been extremely successful in his collection processes which resulted in 100% remittance compliance in FY13. In FY14, only one of the 90 hotels/motels/Inns operating in Fresno was very recently in a delinquent status. They have been notified and billed including penalties and interest based upon historical taxes collected. The next step is for the Accountant Auditor to call and possibly visit the taxpayers to rectify the delinquent status if normal collection procedures have failed.

Finance is cognizant of the updated Ordinance 7-608 with enhanced ‘collection tools’ including property liens, warrants or sale and seizure of real property. We are currently researching the steps needed to develop the process to lien the property  if the hotel/motel/Inn owner owns the real property. It will also be necessary to involve the City Attorney to develop a recordable ‘Notice Of Lien’ document specifically to address TOT liens and allow the Business Tax division to implement the ‘tools’ created by the revised Ordinance Code Section 7-608.

#### **Future TOT “Audits”**

As stated previously in this audit report, the primary purpose of this limited scope audit was to review and evaluate the overall adequacy of compliance by a sample of the City’s motels and hotels with the City’s Transient Room Tax Ordinance Code, Article 6, Sections 7-601 through 7-619. Of 94 total motels and hotels operating in the City of Fresno, only 10 were actually visited during the course of this audit. Tests for compliance with the Ordinance Code by this small sample of motels and hotels was performed, and related TOT records were examined as considered necessary under the circumstances.

Based on the audit findings noted throughout this TOT audit report for only 10 of 94 motels and hotels operating in our City, the following audit recommendation is being proposed related to the City's TOT Program and future TOT "In-House Audits" going forward.

#### Audit Recommendation

8. The recently hired Accountant-Auditor I in the Business Tax Division should perform more in-depth TOT "audits" of several more of the motels and hotels operating in our City. The "Audit Program" developed by the Principal Internal Auditor can be used as an initial guide for these audits. Compliance testing of the City's revised TOT Ordinance Code should be covered in conjunction with these audits. However, specific focus and emphasis should be on the verification that all "Gross Rents" collected by the motels and hotels are being reported monthly on their TOT tax returns and that all "Exemptions" reported are adequately documented for TOT calculations and payments to the City.

#### **Original Management Response to Audit Recommendation 8**

Finance agrees with this recommendation.

The City has every intention of having the newly hired Accountant-Auditor engage in more in-depth TOT as well as Business License audits in the near future. Prior to commencing these audits, the individual is becoming familiar with the City's Municipal Code associated with these areas as well as becoming knowledgeable of the City's processes and collection law. Collection law is a very complex and high risk area and caution must be taken so as to not violate consumer rights. Prior to engaging in any measures that would deprive an owner of unencumbered use of their property; the City must take every precaution to ensure that it has a legal right to do so.

#### **Management Follow-up Response/Status of Audit Recommendation 8 – In Progress**

The Accountant Auditor, Tim Tonel, has developed a manual for auditing Transient Occupancy Tax accounts. Currently, this manual is in draft form and is being reviewed by the Assistant Controller and the Business Tax Manager. As soon as the draft is finalized, Tim will begin to schedule desk and onsite audits with all 94 hotels/motels/Inns. The proposed manual not only covers audit procedures to be performed, but also addresses the type and kind of audit evidence that must be retained in order to properly document the audit results, recommendations and follow up procedures.

**ARTICLE 6 - TRANSIENT ROOM TAX**

**SEC. 7-601. - TITLE.**

**SEC. 7-602. - DEFINITIONS.**

**SEC. 7-603. - TAX IMPOSED.**

**SEC. 7-604. - COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION SCHEDULES.**

**SEC. 7-605. - OPERATOR'S DUTIES.**

**SEC. 7-606. - EXEMPTIONS.**

**SEC. 7-607. - REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION; CERTIFICATION OF AUTHORITY.**

**SEC. 7-608. - PENALTIES AND INTEREST.**

**SEC. 7-609. - DUE DATE; RETURNS AND PAYMENTS.**

**SEC. 7-610. - DEFICIENCY DETERMINATIONS.**

**SEC. 7-611. - REDETERMINATIONS.**

**SEC. 7-612. - SECURITY FOR COLLECTION OF TAX.**

**SEC. 7-613. - REFUNDS.**

**SEC. 7-614. - ADMINISTRATION.**

**SEC. 7-615. - APPEAL.**

**SEC. 7-616. - SAVING CLAUSE.**

**SEC. 7-617. - VIOLATIONS.**

**SEC. 7-618. - MISDEMEANOR.**

**SEC. 7-619. - CONVENTION CENTER FUND.**

**SEC. 7-601. - TITLE.**

**This article shall be known as the Transient Room Tax Ordinance of the City of Fresno.**

**(Rep. and Added Ord. 6457, 1964).**

**Exhibit A**

**SEC. 7-602. - DEFINITIONS.**

Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance.

- (a) "Hotel" means any structure, or any portion of any structure which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.
- (b) "Legislative body" means the City Council of the City of Fresno.
- (c) "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms or portions thereof, in any hotel for dwelling, lodging, or sleeping purposes.
- (d) "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity, and includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to collect or remit the tax imposed by this article on behalf of such corporation or partnership.
- (e) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- (f) "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, and property and services of any kind or nature, without any deduction therefrom whatsoever.
- (g) "Tax Administrator" means the Controller and Director of Finance of the City of Fresno. "Tax Administrator" as used herein, shall, where applicable, also include the person(s) authorized to collect assessments on behalf of the Tourism Business Improvement District, to the extent authority is delegated by ordinance, resolution, or agreement with the city.
- (h) "Transient" means any person who exercises occupancy or is entitled to occupancy in a hotel by reason of a lease, concession, permit, right of access, license or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this ordinance may be considered.

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-601; Am. Ord. 69-48, 1969; Am. Ord. 88-8, § 4, eff. 2-12-88; Am. Ord. 2012-17, § 1, eff. 10-5-12).

**SEC. 7-603. - TAX IMPOSED.**

- (a) **Transient Occupancy Tax.** For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax to be known as the "Transient Occupancy Tax" ("TOT") in the amount designated in the Master Fee Resolution. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. Any unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to him.
- (b) **Tourism Business Improvement District.** The provisions of this ordinance, as applicable, shall also apply to the collection of a duly authorized "Tourism Business Improvement District" ("TBID") assessment. All references to "tax" in this ordinance shall apply also to collection of the TBID assessment.
- (Rep. and Added Ord. 6457, 1964, based on former Secs. 4-602, 4-603; Am. Ord. 67-42, 1967; Am. Ord. 73-74, § 1, eff. 7-1-73; Am. Ord. 82-127, § 1, eff. 12-24-82; Am. Ord. 2012-17, § 1, eff. 10-5-12).

**SEC. 7-604. - COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION SCHEDULES.**

Every operator maintaining a place of business and renting rooms in this city, the occupancy of which is not exempted under the terms of this ordinance, shall collect the tax from the occupant. The tax, when collected by the operator, shall immediately be deemed city funds held in trust by the operator for the sole benefit of the city, to be transferred to the city as provided in this ordinance. The tax required to be collected by the operator also constitutes a debt owing by the operator to the city. In all cases of transactions upon credit or deferred payment, the payment of tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefore at the time and to the extent that such credits are paid or deferred payments are made in accordance with the rate of tax owing on the amount thereof.

The Tax Administrator shall enforce the provisions of this ordinance and shall have the power to adopt rules and regulations not inconsistent herewith as may be necessary or desirable to aid in the enforcement hereof. He shall provide schedules for payment of the tax and such schedules shall eliminate fractions of one cent.

(Added Ord. 6194, 1963; Am. Ord. 6224, 1963; Rep. and Added Ord. 6457, 1964; Am. Ord. 2012-17, § 1, eff. 10-5-12).

**SEC. 7-605. - OPERATOR'S DUTIES.**

Each operator shall collect the tax imposed by this ordinance to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-604 and 4-605).

**SEC. 7-606. - EXEMPTIONS.**

No tax imposed under this article shall be imposed upon:

- (a) Any person as to who, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided;
- (b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty or any federal or California city, county or state government officer or employee when on official business;
- (c) Any occupant for more than thirty successive calendar days;
- (d) Any occupant whose rent is of a value less than two dollars (\$2.) a day;
- (e) Any person who rents a private home, vacation cabin, or like facility from any owner who is not regularly engaged in the business of renting such facilities but does so only occasionally and incidentally to his own use thereof;
- (f) Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or home for aged people;
- (g) Any person who, while attending a convention or similar gathering in the city, rents a facility which is ordinarily used for occupancies not taxable under this article;

No exemption shall be granted under subsections (a) or (b) of this section except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Tax Administrator.

(Added Ord. 6194, 1963; Rep. and Added Ord. 6457, 1964; Am. Ord. 6689, 1965; Am. Ord. 68-56, 1968; Am. Ord. 88-143, § 1, eff. 12-16-88).

**SEC. 7-607. - REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION; CERTIFICATION OF AUTHORITY.**

Every person engaging or about to engage in business as an operator of a hotel in this city shall register with the Tax Administrator on a form provided by him. Persons engaged in such business must so register not later than July 15, 1964, or within fifteen days after commencing business whichever is later, but such privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax on and after the date of imposition thereof, regardless of registration. Such registration shall set forth the name under which such person transacts or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The registration shall be signed by authorized representatives on behalf of both the owner of the property and the operator, if different; in case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the registration. The registration shall contain an express acknowledgement and consent to all terms contained in this ordinance, including but not limited to remedies for non-payment of the tax. The Tax

Administrator shall within ten days after such registration issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of such registrant. Such certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named, upon its sale or transfer, or as provided in this ordinance. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. No person or entity shall operate a hotel in this city without a current and valid certificate of authority.

Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;
- (4) This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the transient room tax ordinance of the City of Fresno by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by said city and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department, or office of said city. This certificate does not constitute a permit.

If the Tax Administrator deems it necessary in order to facilitate initial registration hereunder of persons engaged in business on or prior to the date of imposition of tax as set forth in this ordinance, he may prescribe provisions therefor other than those provided in this section. Such provisions shall be made to effect the purposes hereof. For such purposes, such provisions shall be in lieu of or in addition to those herein provided. Such registration and certificate thereof shall have the same effect as that provided herein.

(Added Ord. 6194, 1964; Rep. and Added Ord. 6457, 1964; Am. Ord. 2012-17, § 1, eff. 10-5-12).

**SEC. 7-608. - PENALTIES AND INTEREST.**

- (a) **Original Delinquency.** Any operator who fails to remit any tax imposed by this ordinance within the time required shall pay a penalty of ten per cent of the amount of the tax in addition to the amount of the tax.
- (b) **Continued Delinquency.** Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten per cent of the amount of the tax in addition to the amount of the tax and the ten per cent penalty first imposed.
- (c) **Fraud.** If the Tax Administrator determines that the non-payment of any remittance due under this ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five



per cent of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs (a) and (b) of this section.

- (d) **Interest.** In addition to the penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one per cent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (e) **Penalties Merged With Tax.** Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.
- (f) **Liens and Collection.** A real property lien shall attach to the location of the hotel effective immediately when a tax becomes delinquent. If any tax is not paid when due, the Tax Administrator may record in the office of county recorder of such counties as the Tax Administrator may determine, a certificate which specifies the amount of tax due and the name and address of the owner and/or operator owing the tax. The certificate shall include a statement that the Tax Administrator has complied with all legal requirements in the determination of the tax owed and a legal description of the real property of the owner. Upon recording of the certificate, the tax, as well as all amounts becoming due thereafter unless paid, constitutes a lien upon all real property owned or thereafter acquired by the owner and/or operator. The lien has the force, effect and priority of a judgment lien.
- (g) **Warrant for Collection of Tax.** At any time after the recording of a certificate of lien, the Tax Administrator may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of such tax. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to writ of execution. The Tax Administrator shall, upon request, pay or advance to the sheriff or marshal such fees, commissions and expenses for services as are provided by law.
- (h) **Seizure and Sale.** In lieu of issuing a warrant, after an assessment is issued or a certificate of lien is recorded, the Tax Administrator may collect the delinquent amount by seizing or causing to be seized any property, real or personal, of the owner and/or operator and selling non-cash or nonnegotiable property at public auction to pay the tax due together with any costs of the seizure and sale. Any seizure made shall only be of property not exempt from execution under the provisions of the Code of Civil Procedure.
- (i) **Combining Actions.** In the discretion of the Controller or Director of Finance and with consent of the TBID administrator, the city may combine in one action efforts to collect both TOT and TBID assessments due from an operator.

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-613; Am. Ord. 2012-17, § 1, eff. 10-5-12).

#### SEC. 7-609. - DUE DATE; RETURNS AND PAYMENTS.

- (a) The tax imposed by this ordinance shall become due and payable from the occupant at the time of occupancy. All amounts of such taxes collectible or collected by any operator are due and payable to the Tax Administrator quarterly on the first day of the months of April, July, October,

and January next succeeding each respective quarterly period and are delinquent after the last day of such months.

- (b) On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe, by every operator and by every person liable to payment of tax hereunder during such quarterly period who has not paid such tax, and who has not made return in regard to the related occupancy which is the subject of tax.
- (c) Returns shall show the amount of tax collected or otherwise due for the related period and such other information as is required by the Tax Administrator. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, the gross receipts of a registered returnee for such period and the explanation in detail of any discrepancy between such amounts.
- (d) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the Tax Administrator at his office.
- (e) For good cause the Tax Administrator may extend for not to exceed one month the time for making any return or payment of tax. No further extension shall be granted, except by the Transient Occupancy Review Committee. Any person to whom an extension is granted who makes return and pays the tax within the period of such extension shall pay, in addition to the tax, interest on the amount thereof at the rate of one-half of one per cent per month, or fraction thereof, on the unpaid balance for the period of such extension to the time of return and payment, which interest shall become a part of the tax.
- (f) The Tax Administrator, if he deems it necessary in order to insure payment or facilitate collection by the city of the amount of taxes may require returns and payment of the amount of taxes for other than quarterly periods.

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-608; Am. Ord. 67-93, 1967).

#### SEC. 7-610. - DEFICIENCY DETERMINATIONS.

- (a) If the Tax Administrator is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the city by any person, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one or more than one period. The determination of the Tax Administrator shall constitute a legal presumption of the amount due.
- (b) In making a determination the Administrator may offset overpayments, if any, which may have been previously made for a period or periods together with interest on the overpayments, against any underpayment for a subsequent period or periods, or against penalties, and interest, on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in Section 7-608

- (c) The Tax Administrator shall give to the operator or occupant written notice of his determination. The notice may be served personally or by mail; if by mail, the notice shall be enclosed in a sealed envelope postage prepaid and addressed to the operator at his address as it appears in the records of the Administrator. In case of service by mail of any notice required by this ordinance the service is complete at the time of deposit in the United States Post Office.
- (d) Except in the case of fraud, intent to evade this ordinance or authorized rules and regulations, or failure to make a timely return, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.
- (e) If any operator shall fail or refuse to collect said tax or to make, within the time provided in this ordinance, any report and remittance of said tax or any portion thereof required by this ordinance or makes a fraudulent return or otherwise willfully attempts to evade this ordinance, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this ordinance and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest, and penalties, provided for by this ordinance. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three years after discovery by the Tax Administrator of any fraud, intent to evade or failure to file return. Any determination shall become final within thirty days after giving notice thereof as herein provided.
- (f) If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is immediately due and payable. If the amount specified in the determination is not paid within ten days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the ten days, unless a petition for redetermination is filed within the ten days and the delinquency penalty and the interest provided in Section 7-608 shall attach to the amount of the tax or the amount of the tax required to be collected.

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-609, 4-610 and 4-611; Am. Ord. 6498, 1964; Am. Ord. 2012-17, § 1, eff. 10-5-12).

#### SEC. 7-611. - REDETERMINATIONS.

- (a) Any person against whom a determination is made under Section 7-610 or any person directly interested may petition for a redetermination within thirty days after service upon the person of notice thereof. If a petition for redetermination is not filed within the thirty-day period, the

determination becomes final at the expiration of the period. Provided, however, a petition for redetermination under subsection (f) of Section 7-610 shall be filed within ten days after notice.

- (b) If a petition for redetermination is filed within the allowable period, the Tax Administrator shall reconsider the determination, and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him ten days' notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.
- (c) The Tax Administrator may decrease or increase the amount of the determination before it becomes final but the amount may be increased only if a claim for the increase is asserted by the Tax Administrator at or before the hearing.
- (d) The order or decision of the Tax Administrator upon a petition for redetermination becomes final fifteen days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the Transient Occupancy Tax Review Committee within fifteen days after service of such notice.

- (e) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the city or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to this chapter, and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review, redetermination or appeal of any tax liability.

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-612; Am. Ord. 6498, 1964; Am. Ord. 2009-40, § 1, eff. 1-23-10).

#### SEC. 7-612. - SECURITY FOR COLLECTION OF TAX.

- (a) The Tax Administrator, whenever he deems it necessary to insure compliance with this ordinance, may require any person subject thereto to deposit with him such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such manner as the Tax Administrator deems proper, or ten thousand dollars (\$10,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided.
- (b) If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the Tax Administrator may, not later than three years after the payment became delinquent, give notice thereof by registered mail to all persons in the county having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the Tax Administrator consents to a transfer or disposition or until twenty days elapse after the receipt of the notice. All persons so notified shall within five days after the receipt of the notice advise the Tax Administrator of all

such credits, other personal property, or debts in their possession, under their control, or owing by them.

- (c) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the Tax Administrator may bring an action in the courts of this State, or any other state, or of the United States in the name of the city to collect the amount delinquent together with penalties and interest.
- (d) If any operator liable for any amount under this ordinance sells out his business or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Administrator showing that he has been paid or a certificate stating that no amount is due. If the purchaser of a business fails to withhold the tax from the purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within thirty days after receiving a written request from the purchaser for a certificate, the Tax Administrator shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Tax Administrator of the amount that must be paid as a condition of issuing the certificate. Failure of the Administrator to mail the notice will release the purchaser from any further obligation to withhold the purchase price as above provided. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out his business or at the time that the determination against the operator becomes final, whichever event occurs the later.

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-614).

#### SEC. 7-613. - REFUNDS.

Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this ordinance, it may be refunded provided a verified claim in writing therefor, stating the specific ground upon which the claim is founded, is filed with the Tax Administrator within three years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid and the balance may be refunded to such person, his administrators or executors.

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-614(f)).

#### SEC. 7-614. - ADMINISTRATION.

- (a) The Tax Administrator shall deposit into a special fund, referred to as the "Convention Center Fund," all transient room tax collections pledged pursuant to Section 20 of the Joint Exercise of Powers Agreement, Fresno City-County Community and Convention Center Authority, entered into on February 24, 1964, as amended.
- (b) Records Required from Operators, etc.; Form. Every operator renting guest rooms in this city shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax

Administrator may require. All records shall be retained by the operator for a period of three years and six months after they come into being.

- (c) **Examination of Records; Investigations.** The Tax Administrator or any person authorized in writing by him may examine the books, papers, records and equipment of any person liable for the tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or if no return is made by the person, to ascertain and determine the amount required to be paid.
- (d) **Authority to Require Reports; Contents.** In administration of the tax the Tax Administrator may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to rentals of guest rooms which are subject to the tax. The reports shall be filed when the Tax Administrator requires and shall set forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the Tax Administrator may require.
- (e) **Confidential Character of Information Obtained; Disclosure Unlawful.** It shall be unlawful for the Tax Administrator or any person having an administrative duty under the provisions of this ordinance to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate, or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Provided that nothing in this subsection shall be construed to prevent:
  - (1) The disclosure to, or the examination of records and equipment by another city official, employee, TBID administrator or agent for collection of taxes or assessments for the sole purpose of administering or enforcing any provisions of this ordinance; or collecting taxes or assessments imposed hereunder;
  - (2) The disclosure of information to, or the examination of records by, federal, or state officials, or the tax officials of another city, or county, or city and county, if a reciprocal arrangement exists; or to a grand jury or court of law, upon subpoena;
  - (3) The disclosure of information and results of examination of records of particular taxpayers, or relating to particular taxpayers, to a court of law in a proceeding brought to determine the existence or amount of any business tax liability of the particular taxpayers to the city;
  - (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest, and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;

(5) The disclosure of the names and addresses of persons to whom Transient Occupancy Registration Certificates have been issued, the names and addresses of officers of corporations and members of partnerships to whom such certificates have been issued, and the general type or nature of their business;

(6) The disclosure to the legislative body by way of public meeting or otherwise of such information as may be necessary in order to permit it to be fully advised as to the facts when a taxpayer files a claim for refund of business taxes, or submits an offer of compromise with regard to a claim asserted against him by the city for business taxes, or when acting upon any other matter;

(7) The disclosure of general statistics regarding taxes collected or business done in the city.

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-615; Am. Ord. 6529, 1964; Am. Ord. 82-127, § 2, eff. 12-24-82; Am. Ord. 2012-17, § 1, eff. 10-5-12).

#### SEC. 7-615. - APPEAL.

Any person aggrieved by any decision of the Tax Administrator may file an appeal under Chapter 1, Article 4. Whenever an appeal is available under this article and no appeal is filed within the time prescribed, the action of the Tax Administrator shall be final.

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-615; Am. Ord. 88-8, § 5, eff. 2-12-88; Am. Ord. 98-65, § 1, eff. 10-1-98; Am. Ord. 2005-14, § 22, eff. 4-9-05).

#### SEC. 7-616. - SAVING CLAUSE.

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional (or otherwise invalid), such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The legislative body hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or paragraphs be declared unconstitutional (or otherwise invalid).

(Rep. and Added Ord. 6457, 1964, based on former Sec. 4-616).

#### SEC. 7-617. - VIOLATIONS.

It is unlawful for any operator or other person so required to, to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Tax Administrator or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of an amount due required by this ordinance to be made.

(Added Ord. 6457, 1964, based on former Sec. 4-617).

**SEC. 7-618. - MISDEMEANOR.**

Any person willfully violating any of the provisions of this ordinance shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment.

(Added Ord. 6457, 1964).

**SEC. 7-619. - CONVENTION CENTER FUND.**

(a) The Convention Center Fund shall be used solely for the following purposes:

- (1) Administration of the provisions of this article.
  - (2) Acquisition, construction, completion, operation, repair and maintenance of public assembly and convention halls, including convention center, auditorium, and little theater buildings with facilities for convention meetings and public assemblies (including dramatic and musical performances); public off-street parking facilities and other site improvements related thereto; lands, easements, and rights-of-way; and other works, property or structures, necessary or convenient for public assembly and convention halls.
  - (3) Expense in connection with proposals or proceedings for acquisition of the facilities referred to in subdivision (2) hereof.
  - (4) Interest and principal payments on bonds issued to acquire any of the facilities referred to in subdivision (2) hereof.
  - (5) Lease payments for lease of any of the facilities referred to in subdivision (2) hereof.
  - (6) Promotion, solicitation, advertisement and staging of conventions, special events, trade shows, and other gatherings to be held at the Fresno City-County Community and Convention Center and at other public or private facilities in the city; provided, that the Council may, by contract, allocate that portion of the annual contributions to the fund from the revenues produced by the city's Transient Room Tax which may be used for this purpose.
- (b) This fund was previously created by former Code Section 7-615, which was adopted by Ordinance No. 6194. The fund and pertinent provisions of that section are continued as reprinted herein.

(Added Ord. 6457, 1964, based on former Sec. 4-15; Am. Ord. 74-73, § 1, eff. 9-1-74; Am. Ord. 78-124, § 1, eff. 9-22-78).





BUSINESS TAX DIVISION  
PO BOX 45017  
FRESNO, CA 93718-5017

**CITY OF FRESNO  
TRANSIENT OCCUPANCY TAX RETURN**

Business Name:  
Description:  
Location:  
Tax Account No.:  
Reporting Period: 3/1/2013 to 3/31/2013

ELECTRONIC SERVICE REQUESTED

102067006248252



**INSTRUCTIONS FOR FILING YOUR TAX RETURN BELOW  
(Reporting Period 3/1/2013 to 3/31/2013):**

- Line 1. Enter the total gross rents for occupancy of rooms for the reporting period. Do not include daily room charges if less than 2 dollars.
  - Line 2. Enter the rents for Permanent Residents (one who occupies or has the right of occupancy for at least thirty (30) consecutive days).
  - Line 3. Enter the rents covered by Government Exemption Certificates you shall keep as part of your business records for at least three (3) years.
  - Line 4. Subtract any amounts from Lines 2 & 3 from Line 1 and enter the result on Line 4 as Taxable Receipts.
  - Line 5. Apply Taxable Receipts to the Tax Table below. Enter Total Amount Due to Line 5 below.
- A completed and signed Return must be filed even if no tax is due. All tax returns filed with the City of Fresno are subject to audit.

Make your payment payable to:  
CITY OF FRESNO  
BUSINESS TAX DIVISION  
Mailing Address:  
P.O. Box 45017  
Fresno, CA 93718-5017  
Physical Address:  
2600 Fresno St. Room 1096  
Fresno, CA 93721  
Office Hours: Mon-Thurs  
10 AM - 5 PM  
Phone: 559-621-6880  
Fax: 559-498-2544

**TRANSIENT OCCUPANCY TAX TABLE**

	By Due Date	Past Due 1-31 Days	Past Due 32-61 Days
	0.120	0.1326	0.1452
For your records, enter the following for reporting period specified below:			
Rents for Permanent Residents:	\$ _____		Total Gross Rents: \$ _____
Rents for Government Agency Occupants:	\$ _____		Taxable Receipts: \$ _____
Total Exclusions:	\$ _____		Total Amount Paid: \$ _____

Renew online at [www.businessstax.fresno.gov/webrenewals/](http://www.businessstax.fresno.gov/webrenewals/)  
Web Security Code: 113285

(CSP)43:7001:000001:001:1000:13087

Detach and return lower portion with your payment. Please DO NOT clip or staple.

**PAYMENT DUE/POSTMARKED BY: 4/22/2013**

**TRANSIENT OCCUPANCY TAX RETURN FORM 17**

Line 1. Reporting Period 3/1/2013 to 3/31/2013		TOTAL GROSS RECEIPTS	\$ _____
Line 2. Rents for Permanent Residents:	\$ _____	Line 4. Taxable Receipts:	\$ _____
Line 3. Rents for Government Agency Occupants:	\$ _____	Line 1 - (Line 2+Line 3)	\$ _____
		Line 5. Total Amount Paid:	\$ _____

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_  
Falsification of information is subject to the penalty of perjury.

Make Checks Payable To:

CITY OF FRESNO  
BUSINESS TAX DIVISION  
PO BOX 45017  
FRESNO, CA 93718-5017

**CITY OF FRESNO MUNICIPAL CODE SECTION 7-614 ( C ) EXAMINATION OF RECORDS**

This code provision authorizes the Tax Administrator or such designee to verify any and all statements made on your return, by examining, investigating, and auditing your business records and equipment.

**CITY OF FRESNO MUNICIPAL CODE SECTION 7-608 PENALTIES AND INTEREST**

**(a) Original Delinquency.** Any operator who fails to remit any tax imposed by this ordinance within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

**(b) Continued Delinquency.** Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.

**(c) Fraud.** If the Tax Administrator determines that the nonpayment of any remittance due under this ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs (a) and (b) of this section.

**(d) Interest.** In addition to the penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one percent per month or fraction thereof of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

**(e) Penalties Merged with Tax.** Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid. (Rep. and Added Ord. 6457, 1964, based on form Sec. 4-613)

The Tax Table shown on the reverse side includes (a), (b), (d) and (e) of the above assessments for a late remittance. Interest is computed at 0.01 (one percent) of the tax due for each month or interest is computed at 0.01 (one percent) of the tax due for each month or partial month the tax remittance is late, continuing beyond the 32-day table amount until the tax remittance is received.

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