

This document is an extract of a larger publication.

civilgrandjury.org is a project of UnGovr.org, a US-based 501(c)(3) nonprofit dedicated to government transparency and public accountability.



## TAX REVENUES LOST? TRANSIENT OCCUPANCY TAX

### BACKGROUND

Transient Occupancy Taxes (TOT) are levied for the privilege of occupying a room or rooms or other living space in a hotel, inn, tourist home or house, motel or other lodging for a period of 30 consecutive days or less. The authority to levy TOT in California is granted to all county Board of Supervisors and/or City Councils in the cities of California by the California Revenue and Taxation Code.<sup>1</sup> In Tulare County, the authority to collect TOT is granted to the County Tax Collector by the Tulare County Board of Supervisors (BOS) via the County TOT ordinance.<sup>2</sup>

### REASONS FOR INVESTIGATION

In October 2009, it came to the attention of the 2009–2010 Tulare County Grand Jury that some problems exist with the current TOT ordinance creating the possibility of tax revenue loss in the County.

### PROCEDURES FOLLOWED

1. Reviewed relevant documents.
2. Reviewed tapes of BOS meetings.
3. Interviewed relevant witnesses.

### FINDINGS

1. Currently, there is an ordinance in place that authorizes the County to levy and collect TOT on hundreds of private homes, town homes, condominiums, cabins and rooms in private homes<sup>3</sup>, which are rented, to person(s) or groups<sup>4</sup> for 30 consecutive days or less.

2. TOT is supposed to be collected from the renter by the Owner/Agent and then paid to the County.
3. For a number of years now the County has been unable to collect the TOT on numerous short-term rentals due to ambiguous language in the ordinance and/or communication (miscommunication) between Owner/Agents, the County Tax Collector and other agencies.
4. Other agencies within the county have given information to Owner/Agents, based on the ambiguous language, which has been misleading.
5. Some verbiage used in the Tulare County TOT ordinance is open for interpretation leaving the opportunity for Owner/Agents of accommodations for rent to evade collecting the TOT and paying it to the County.
6. The August 2008 revision of the TOT ordinance still has at least three areas of ambiguity.

<sup>1</sup> See the California Revenue and Taxation Code 7280 at the end of this report.

<sup>2</sup> See the Tulare County Transient Occupancy Tax (TOT) ordinance § 1-05-1345 through 1445 at the end of this report.

<sup>3</sup> Tulare County TOT ordinance 1-05-1355 (b)

<sup>4</sup> Tulare County TOT ordinance 1-05-1355 (a)

- a. The ordinance fails to define clearly, which types of rental accommodations are subject to being taxed under the ordinance.
  - b. The ordinance fails to define clearly, what constitutes a day.
  - c. The ordinance fails to address partial day rental.
7. Vagueness in the County's TOT ordinance has resulted in a lack of accountability of some Owner/Agents who rent lodgings for 30 days or less causing the County to incur a loss of tax revenue.
  8. Presently, the County Tax Collector utilizes a contracted investigator to locate Owner/Agents who do not comply with the current TOT ordinance. This investigator has brought about the recovery of \$34,622.66 in TOT plus fees and penalties from delinquent Owner/Agents.
  9. When it is discovered that lodgings for rent do not comply with the TOT ordinance, the County Tax Collector formulates the required TOT along with any fees and penalties, which the Owner/Agent is required to pay.
  10. If the Owner/Agent disagrees with the County Tax Collector, the Owner/Agent may appeal to the BOS.
  11. In the last few months, there have been at least two appeals to the BOS. The BOS upheld both of these appeals (one fully and one in part), resulting in the loss of tax revenue to the County of approximately \$9,000 due to the vagueness of the TOT ordinance.

12. On October 27, 2009, the County Tax Collector advised the BOS that a draft of a revised TOT ordinance would be before the BOS in January 2010.

## CONCLUSIONS

It is the opinion of the Grand Jury that the ambiguity of the Tulare County TOT ordinance caused not only the loss stated in finding number eleven (11) but other TOT losses as well. The Grand Jury also believes that in at least one incident the Owner/Agent absolutely did owe the TOT applied by the County Tax Collector. If we are going to live by the "letter of the law" and not necessarily by its intent, the ordinance writers need to better align the verbiage of the law and the goal.

The County will continue to have difficulty enforcing the TOT until changes are made in the language of the ordinance. The County will also continue having difficulties until all staff in all concerned agencies are briefed on the ordinance and its language.

## RECOMMENDATIONS

1. Rewrite the TOT ordinance to eliminate any possibility of ambiguity or confusion i.e. "*occasionally and incidentally*"<sup>5</sup> on the part of the Owner/Agent (proprietor /taxpayer) before the end of the fiscal year 2009 -2010.
  - a. Impose the TOT on **any** rental that is less than 30 consecutive days to the same renter for the same property.
  - b. Clarify what constitutes a full day and what the obligation is for any partial day use.

---

<sup>5</sup> Tulare County TOT § 1-05-1355 (b).

- c. Put in place fines and penalties in an amount that will discourage non-compliance with the ordinance.
  - d. Once the new ordinance is in place and enforceable, brief all staff in all concerned agencies on the new language and the reason it was changed. Follow up on staff briefings at a minimum of every three years and/or as changes are made to the ordinance.
  - e. Refer all questions regarding the TOT from any agency and/or the public to the County Tax Collector.
  - f. Inform as many Owner/Agents as possible on the TOT ordinance and the changes made to the ordinance.
  - g. Print a public notice in all available news sources regarding TOT changes.
2. Register and inspect all properties that are subject to the TOT ordinance.

## **REQUIRED RESPONSES**

Tulare County Board of Supervisors  
Tulare County Tax

CALIFORNIA CODES - REVENUE AND TAXATION CODE - SECTIONS 7280-7283.51

7280. (a) The legislative body of any city, county, or city and county may levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days. The tax, when levied by the legislative body of a county, applies only to the unincorporated areas of the county. (b) For purposes of this section, the term "the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging" does not include the right of an owner of a time-share estate in a room or rooms in a time-share project, or the owner of a membership camping contract in a camping site at a campground, or the guest of the owner, to occupy the room, rooms, camping site, or other real property in which the owner retains that interest. For purposes of this subdivision:

- (1) "Time-share estate" means a time-share estate, as defined by paragraph (1) of subdivision (x) of Section 11212 of the Business and Professions Code.
- (2) "Membership camping contract" means a right or license as defined by subdivision (b) of Section 1812.300 of the Civil Code.
- (3) "Guest of that owner" means a person who does either of the following:
  - (A) Occupies real property accompanied by the owner of either of the following:
    - (i) A time-share estate in that real property.
    - (ii) A camping site in a campground pursuant to a right or license under a membership camping contract.
  - (B) Exercises that owner's right of occupancy without payment of any compensation to the owner.
  - (C) "Guest of that owner" specifically includes a person occupying a time-share unit or a camping site in a

campground pursuant to any form of exchange program.

- (c) For purposes of this section, "other lodging" includes, but is not limited to, a camping site or a space at a campground or recreational vehicle park, but does not include any of the following:
  - (1) Any facilities operated by a local government entity.
  - (2) Any lodging excluded pursuant to subdivision (b).
  - (3) Any campsite excluded from taxation pursuant to Section 7282.
- (d) Subdivision (b) does not affect or apply to the authority of any city, county, or city and county to collect a transient occupancy tax from time-share projects that were in existence as of May 1, 1985, and which time-share projects were then subject to a transient occupancy tax imposed by an ordinance duly enacted prior to May 1, 1985, pursuant to this section. Chapter 257 of the Statutes of 1985 may not be construed to affect any litigation pending on or prior to December 31, 1985.
- (e) (1) (A) If the legislative body of a city, county, or city and county elects to exempt from a tax imposed pursuant to this section any of the following persons whose occupancy is for the official business of their employers, the legislative body shall create a standard form to claim this exemption and the officer or employee claiming the exemption shall sign the form under penalty of perjury:
  - (i) An employee or officer of a government outside the United States.
  - (ii) An employee or officer of the United States government.
  - (iii) An employee or officer of the state government or of the government of a political subdivision of the state.

(B) The standard form described in subparagraph (A) shall contain a requirement that the employee or officer claiming the exemption provide to the property owner one of the following, as determined by the legislative body of the city, county, or city and county imposing the tax, as conclusive evidence that his or her occupancy is for the official business of his or her employer:

- (i) Travel orders from his or her government employer.
- (ii) A government warrant issued by his or her employer to pay for the occupancy.
- (iii) A government credit card issued by his or her employer to pay for the occupancy.

(C) The standard form described in subparagraph (A) shall contain a requirement that the officer or employee provide photo identification, proof of his or her governmental employment as an employee or officer as described in clause (i), (ii), or (iii) of subparagraph (A), and proof, consistent with the provisions of subparagraph (B), that his or her occupancy is for the official business of his or her governmental employer.

(2) There shall be a reputable presumption that a property owner is not liable for the tax imposed pursuant to this section with respect to any government employee or officer described in clause (i), (ii), or (iii) of subparagraph (A) of paragraph (1) for whom the property owner retains a signed and dated copy of a standard form that complies with the provisions of subparagraphs (B) and (C) of paragraph (1). (f) The provisions of subdivision (e) are not intended to preclude a city, county, or city and county from electing to exempt any other class of persons from the tax imposed pursuant to this section.

7280.5. (a) The redevelopment agency of any city which has levied a transient occupancy tax pursuant to Section 7280

or 7281 may also, by ordinance, levy a transient occupancy tax in accordance with this part, if the city's ordinance entitles any person subject to a transient occupancy tax under the city's ordinance to credit the amount of transient occupancy taxes due to the redevelopment agency of that city pursuant to this section against the payment of taxes due under the city's ordinance.

(b) An ordinance of a redevelopment agency imposing a transient occupancy tax pursuant to this section shall contain an enacting clause which states as follows: "The redevelopment agency of the City of \_\_\_\_ does ordain as follows:" The ordinance shall be signed by the chairperson of the agency and attested by the clerk or secretary of the agency, and shall take effect immediately upon its final passage, but shall become operative on the first day of the first calendar quarter commencing more than 180 days after adoption of the ordinance. In all other respects, the ordinance shall be introduced and passed, and notice given by publication, in the manner provided by law for general law cities. (c) Any redevelopment agency adopting an ordinance pursuant to this section shall not levy a transient occupancy tax in excess of the rate of transient occupancy tax levied by its city, and the tax shall be levied only on accommodations located in a redevelopment project area for which the taxes are pledged pursuant to subdivision (e) of Section 33641 of the Health and Safety Code. (d) Any pledge pursuant to Section 33641 of the Health and Safety Code made with respect to taxes imposed under this section for the payment of principal and interest on bonds of a redevelopment agency shall constitute the obligation of a contract between the development agency and the holder of the bonds and shall be protected

from impairment by the United States and California Constitutions. The provisions of this section which authorize the imposition of the taxes may not be repealed during the time that any of the bonds remain outstanding.

7281. The legislative body of any city or county may levy a tax on the privilege of renting a mobile home, as defined in Section 18008 of the Health and Safety Code, which is located outside a mobile home park for occupancy on a transient basis unless such occupancy is for any period of more than 30 days. Such tax when levied by the legislative body of a county shall apply only to the unincorporated areas of the county. This section does not authorize any city or county to levy a tax on the privilege of renting any mobile home when the tenant is an employee of the owner or operator of the mobile home.

7282. Notwithstanding any other provision of law, no city, county, or city and county may levy a tax on the privilege of occupying a campsite in a unit of the state park system.

7282.3. (a) Notwithstanding any other provision of law, no city, county, or city and county may levy a tax under Section 7280 on any amount subject to tax under the Sales and Use Tax Law (Part 1 (commencing with Section 6001)) with respect to the sale of food products. (b) This section shall also apply to charter cities. (c) For purposes of this section, "food products" means food and beverage products of every kind, regardless of how or where served, and shall specifically include, but not be limited to, alcoholic beverages and carbonated beverages of every kind.

7283. A board of supervisors may, by

ordinance or resolution, establish procedures for the collection of delinquent amounts of any tax levied pursuant to this chapter.

7283.5. (a) (1) A purchaser, transferee, or other person or entity attempting to obtain ownership of a property, the owner of which is required to collect the tax imposed pursuant to this chapter, may request the city, county, or city and county in which that property is located to issue a tax clearance certificate under this section. (2) A city, county, or city and county that issues a tax clearance certificate under this section may charge an administrative fee to cover its costs in issuing the certificate. (b) Within 90 days of receiving a request described in subdivision (a), a city, county, or city and county shall do either of the following:

- (1) Issue the tax clearance certificate.
- (2) (A) Request the current owner of the property to make available that owner's transient occupancy tax records for the purpose of conducting an audit regarding transient occupancy taxes that may be due and owing from the owner of the property. (B) (i) Complete the audit described in subparagraph (A) on or before 90 days after the date that the current or former owner's records are made available to the auditing jurisdiction and issue a tax clearance certificate within 30 days of completing the audit. (ii) If, after completing the audit, the city, county, or city and county makes a determination that the current owner's records are insufficient to make a determination of whether transient occupancy taxes may be due and owing, the city, county, or city and county is not required to issue a tax clearance certificate as otherwise required by this subdivision. The city, county, or city and county shall, within 30 days of making that determination, notify the purchaser,

transferee, or other person or entity that made the request that it will not issue a tax clearance certificate due to the insufficiency of the prior owner's records. (c) If a city, county, or city and county does not comply with subdivision (b), the purchaser, transferee, or other person or entity that obtains ownership of the property shall not be liable for any transient occupancy tax obligations incurred prior to the purchase or transfer of the property. (d) For a tax clearance certificate issued under this section, all of the following apply:(1) The certificate shall state the amount of tax due and owing for the subject property, if any. (2) The certificate shall state the period of time for which it is valid. (3) The purchaser, transferee, or other person or entity who obtains ownership of the property may rely upon the tax clearance certificate as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate. (e) Any purchaser, transferee, or other person or entity

described in subdivision (a) who does not obtain a tax clearance certificate under this section, or who obtains a tax clearance certificate that indicates that tax is due and fails to withhold, for the benefit of the city, county, or city and county, sufficient funds in the escrow account for the purchase of the property to satisfy the transient occupancy tax liability, shall be held liable for the amount of tax due and owing on the property. (f) This section may not be construed to relieve a property owner of transient occupancy tax obligations incurred when that owner owned the property.

7283.51. Notwithstanding any other provision of law, except in the case of fraud or the failure of a property owner to file a transient occupancy tax return, a city, county, or city and county may institute an action to collect unpaid transient occupancy taxes within four years of the date on which the transient occupancy taxes were required to be paid.

**TULARE COUNTY TRANSIENT OCCUPANCY ORDINANCE  
SECTION 1-05-1345 through 1445**

**ARTICLE 11. TRANSIENT OCCUPANCY TAX**

**1-05-1345 TITLE:**

This Article shall be known as the Transient Occupancy Tax Law of the County of Tulare.

**1-05-1350 LEGISLATIVE AUTHORITY:**

This Article is adopted pursuant to the authority set forth in sections 7280-7283.51 of the Revenue and Taxation Code of the State of California.

(Amended by Ord. No. 3368, effective 10-09-08)

**1-05-1355 DEFINITIONS:**

Except where the context otherwise requires, the following definitions shall govern the construction of this Article:

(a) "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.

(b) "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, or other similar structure or portion thereof. "Hotel" also includes a

mobile home, as defined in section 18008 of the Health and Safety Code of the State of California, which is located outside a mobile home park when the tenant is not an employee of the owner or operator of the mobile home. "Hotel" does not include a hospital room, medical clinic, convalescent home or home for the aged. Also, "hotel" does not include a private home, vacation cabin or similar facility which is rented by a person who is not regularly engaged in the business of renting such facilities and does so only occasionally and incidentally to his or her own use thereof.

(c) "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

(d) "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less. For the purpose of counting consecutive days, each day for which full rent is charged by the operator shall be deemed a full day.

(e) "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 there from.

(f) "Operator" means the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sub lessee, mortgagee in possession, licensee, or any other capacity. If the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Article and shall have the

same duties and liabilities as his or her principal. Compliance with the provisions of this Article by either the principal or the managing agent shall, however, be considered to be compliance by both.

(g) "Tax Collector" means the Auditor-Controller/Treasurer- Tax Collector of the County of Tulare.

(Amended by Ord. No. 3368, effective 10-09-08)

1-05-1360 AMOUNT OF TAX: PAYMENT BY TRANSIENT:

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten percent (10%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the County, which is extinguished only by payment to the operator, who is mandated to deliver such tax to the County as provided in this Article. 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. The unpaid tax shall be due when the transient ceases to occupy space in the hotel.

(Amended by Ord. No. 3368, effective 10-09-08)

1-05-1365 EXEMPTIONS:

No tax shall be imposed upon the following persons and occupancies:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the County 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 intern occupancy international treaty.

(c) Any occupancy, by one or more occupants, for which the total rent paid by the occupants is less than Two Dollars (\$2.00) a day.

(d) Any person in the performance of official duties as an officer or employee of a city, county, state or federal government.

No exemption shall be granted under subsections (a) or (b) of this section unless a claim of exemption on the form prescribed by the Tax Collector is executed by the transient under penalty of perjury and filed with the operator at the time rent is collected.

(Amended by Ord. No. 3368, effective 10-09-08)

**1-05-1370 REFUNDS: WAIVER:**

If a person exercises occupancy or is entitled to occupancy for a period longer than thirty (30) consecutive days, thus removing such person from the definition of transient, then the operator shall refund to such person immediately the total amount of the tax previously collected by the operator from such person during the initial thirty (30) consecutive days of occupancy under section [1-05-1375](#) of this Article.

**1-05-1375 DUTIES OF OPERATOR:**

Each operator shall collect the tax imposed by this Article to the same extent, and at the same time, as the rent is collected from every transient. Failure of the operator to impose or collect the tax shall not relieve the operator from the obligation to remit to the Tax Collector the tax due under this Article. The operator shall provide to each transient a receipt for payment of the tax and the amount of tax shall be separately stated from the amount of the rent charged. It shall be unlawful for any person to 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 provided in this Article.

(Amended by Ord. No. 3368, effective 10-09-08)

**1-05-1380 REGISTRATION OF OPERATORS:**

Every person engaging or about to engage in business as an operator of a hotel in the unincorporated area of Tulare County, shall register with the Tax Collector on a form provided by him or her. Persons engaged in such business must so register not later than January 1, 1965, or within thirty (30) 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 collection and remittance of tax on and after the date of imposition thereof, regardless of registration. Such registration form shall set forth the name under which such person transacts or intends to transact business, the location of his or her place or places of business and such other information to facilitate the collection of the tax as the Tax Collector may require. The registration form shall be signed by the owner if a natural person, by a member or partner in case of an association or partnership, and by an executive officer or some person specifically authorized by the corporation to sign the registration form in the case of a corporation. The Tax Collector shall, within ten (10) days after receiving such registration form, issue without charge a certificate of authority to each registrant to collect the tax from transients, together with a duplicate thereof for each additional place of business of such registrant. Such certificates shall be non assignable and nontransferable and shall be surrendered immediately to the Tax Collector upon the cessation of business at the location named or upon sale or transfer of the hotel. Each certificate shall be prominently displayed in the hotel so as to be seen and come to the notice

readily of all occupants and persons seeking occupancy. Said certificate shall contain the following information:

- (a) The name of the operator.
- (b) The address of the hotel.
- (c) The date upon which the certificate was issued.
- (d) The following statement:

This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Occupancy Tax Law of the County of Tulare by registering with the Tax Collector for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all locally applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this County. This certificate does not constitute a permit.

(e) Such additional information as may be required by the Tax Collector. (Amended by Ord. No. 3368, effective 10-09-08)

**1-05-1385 REPORTING AND REMITTING:**

Each operator shall, on or before the last day of the calendar month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Collector, file a return with the Tax Collector, on forms provided by the Tax Collector. The operator's return shall be complete when it is filed and it shall state the total rents charged and received and the amount of tax collected from transient occupancies. At the time the return is filed, the full amount of the tax collected

shall be remitted to the Tax Collector. The Tax Collector may establish shorter reporting periods for any operator if he or she deems it necessary in order to ensure collection of the tax and he or she may require additional information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this Article shall be held in trust for the account of the County until payment thereof is made to the Tax Collector.

(Amended by Ord. No. 3368, effective 10-09-08)

**1-05-1390 REMITTANCE BY MAIL:**

If a remittance to cover a payment required by this Article to be made to the Tax Collector on or before a specified date is sent through the United States mail, properly addressed with postage prepaid, it shall be deemed to have been received by the Tax Collector on the date shown by the post office cancellation mark stamped upon the envelope containing the remittance or on the date it was mailed if proof satisfactory to the Tax Collector establishes that the mailing occurred on an earlier date. Nothing in this section shall be construed as constituting payment of any remittance required, unless such remittance is actually received by the Tax Collector.

**1-05-1395 PENALTIES AND INTEREST: ORIGINAL DELINQUENCY:**

Any operator who fails to remit any tax imposed by this Article within the time required by section [1-05-1385](#) of this Article shall pay a penalty of ten per cent (10%) of the total amount of the tax in addition to the amount of the tax.

**1-05-1400 SAME: CONTINUED DELINQUENCY:**

Any operator who fails to remit any delinquent remittance on or before the last day of the second calendar month

following the close of each calendar quarter shall pay a second delinquency penalty of ten per cent (10%) of the amount of the tax in addition to the amount of the tax and the ten per cent (10%) penalty first imposed.

**1-05-1405 SAME: FRAUD:**

If the Tax Collector determines that the nonpayment of any remittance due under this Article is due to fraud, a penalty of twenty five per cent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in sections [1-05-1395](#) and [1-05-1400](#) of this Article.

**1-05-1410 SAME: INTEREST:**

In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Article shall pay interest at the rate of one-half of one per cent (0.5%) per month or any fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(Amended by Ord. No. 3368, effective 10-09-08)

**1-05-1415 SAME: PENALTIES AND INTEREST MERGE WITH TAX:**

Every penalty imposed and such interest as accrues under the provisions of sections [1-05-1395](#) through [1-05-1410](#) of this Article shall become a part of the tax herein required to be paid.

**1-05-1420 FAILURE TO COLLECT AND REPORT TAX:**

(a) If any operator shall fail or refuse to collect or remit the tax or any portion thereof required by this Article or to file, within the time provided in this Article, any report or return of said tax, the Tax Collector shall proceed in such manner as he or she may reasonably deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the Tax Collector secures such

facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this Article, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this Article. When such determination has been made, the Tax Collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his or her last known address.

(b) Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the Tax Collector for a hearing on the amount assessed. If application by the operator for a hearing is not made within said ten (10) day period, the tax, interest and penalties determined by the Tax Collector shall become final and conclusive and immediately due and payable. If such application is made, the Tax Collector shall give not less than five (5) days' written notice to the operator, in the manner prescribed above, to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties.

(c) At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed.

(d) After such hearing the Tax Collector shall determine the proper tax to be remitted and shall thereafter give written notice to the operator in the manner prescribed above of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable fifteen (15) days after the serving or mailing of such notice unless an appeal is taken as provided in section [1-05-1435](#) of this Article.

(Amended by Ord. No. 3368, effective 10-09-08)

1-05-1425 DEFICIENCY DETERMINATIONS:

(a) If the Tax Collector is not satisfied with a return filed by an operator or the amount of the operator's alleged tax liability, the Tax Collector shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the Tax Collector shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this Article, the Tax Collector shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this Article. In any case where determination is made, the Tax Collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator at his or her last known address.

(b) The operator may, within ten (10) days after service or mailing of such notice, apply in writing to the Tax Collector for a hearing on the amount assessed. If an application by the operator for a hearing is not received within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Collector shall become final and conclusive and immediately due and payable. If such application is timely made, the Tax Collector shall give not less than five (5) days of written notice in the manner prescribed herein to the operator to show cause, at a time and place fixed in such notice, why the assessed amount should not be fixed for such tax, interest and penalties.

(c) At such hearing, the operator may appear and offer evidence why the assessed amount, including interest and penalties, should not be so fixed.

(d) After such hearing the Tax Collector shall determine the proper tax to be remitted and shall thereafter give written notice to the operator in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The Tax Collector's determination shall be presumed to be correct. In connection with all appeals, the operator has the burden of proving that the Tax Collector's determination is incorrect, and the burden of producing sufficient evidence to establish the correct tax liability. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section [1-05-1435](#).

(Amended by Ord. No. 3368, effective 10-09-08)

1-05-1430 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 Collector under this Article, 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 Collector within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Collector. If the claim is approved by the Tax Collector 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, or his or her administrators or executors.

(Amended by Ord. No. 3368, effective 10-09-08)

1-05-1435 APPEALS:

Any operator aggrieved by any decision of the Tax Collector may appeal to the Board of Supervisors by filing a notice of

appeal with the Clerk of the Board of Supervisors within fifteen (15) days after the serving or mailing of the notice of the decision. The Board of Supervisors shall fix a time and place for hearing such appeal and the Clerk of the Board of Supervisors shall give notice in writing to such operator at his or her last known address. The decision of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator at his or her last known address. Any amount found to be due shall be immediately due and payable upon the service of said notice. (Amended by Ord. No. 3368, effective 10-09-08)

1-05-1440 RECORDS:

(a) It shall be the duty of every operator liable for the collection and remittance to the county of any tax imposed by this Article to keep and preserve, for a period of five (5) years, all records that may be necessary to determine the amount of such tax as he or she may have been liable for collecting and remitting to the County under this Article. At a minimum, the records deemed necessary for this determination shall be:

- (1) A general ledger indicating all revenue collected by the operator;
- (2) A chronological revenue journal listing the tax and room revenues separately, or other means acceptable to the Tax Collector summarizing the operator's monthly and quarterly revenue;
- (3) Room registrations, which shall include the name, address, telephone number and the automobile license plate number of the transient;
- (4) A calendar or journal listing all advance registrations and the date on which the advance registration was entered on the listing;

(5) Copies of any forms used to claim exemption from the tax; and

(6) Consecutively numbered payment receipts showing the amount paid for occupancy and which list the room rate separately from the amount of tax paid. Such receipts must, with reasonable effort, be identifiable using the revenue journal of subdivision (a)(2).

(b) At all reasonable times, the records required by this section shall be available for inspection by the Tax Collector or authorized deputies. Performance of an audit does not waive the County's right to any tax or the five (5) year requirement of preserving records.

(c) When an operator neglects, refuses or fails to produce for inspection any record required by this section, the Tax Collector may obtain a subpoena for such record(s) from the chairperson of the Board of Supervisors who may issue a subpoena and undertake the actions the chairperson is authorized to undertake pursuant to Article 9, of Chapter 1 of Part 2 of Division 2 of Title 3 of the Government Code (commencing with Government Code section 25170). Pursuant to Government Code section 25170, the subpoena shall command the operator to appear before the Board of Supervisors, at a time and place therein specified, to be examined as a witness. The subpoena may require the operator to produce all books, papers, and documents in his or her possession or under his or her control, required under this section.

(d) In the event that any records required by this section are unavailable, the Tax Collector shall proceed in such manner as he or she may reasonably deem best to obtain facts and information on which to base his or her estimate of the tax due under this Article.

(Amended by Ord. No. 3368, effective 10-09-08)

1-05-1445 CERTIFICATE OF DELINQUENCY AND TRANSIENT OCCUPANCY TAX LIEN:

(a) The TaxCollector is authorized to record a Certificate of Delinquency and Transient Occupancy Tax Lien in the official records of the County Recorder against any operator who fails to remit taxes, penalties, or interest due under this Article within the time herein required. The Certificate of Delinquency and Transient Occupancy Tax Lien may be recorded by the Tax Collector after:

(1) The tenth (10th) day following service or mailing of the notice required by subdivision (a) of either section [1-05-1420](#) or section [1-05-1425](#), if the operator does not timely file a hearing application as permitted under subdivision (b) of either section [1-05-1420](#) or section [1-05-1425](#), whichever is applicable.

(2) The fifteenth (15th) day after the Tax Collector's determination of the amount of tax to be remitted pursuant to subdivision (d) of either section [1-05-1420](#) or section [1-05-1425](#), unless the operator files a timely appeal pursuant to section [1-05-1435](#).

(3) If the operator files a timely appeal pursuant to section [1-05-1435](#), the fifteenth (15th) day after service of the Board of Supervisor's findings pursuant to section [1-05-1435](#).

The Certificate of Delinquency and Transient Occupancy Tax Lien may be recorded within three (3) years after the tax becomes due. The Certificate of Delinquency and Transient Occupancy Tax Lien shall be dated and specify the amount of tax and penalties due as of that date, the name and last known address of the operator liable for the same, and a statement that the Tax Collector has complied with all provisions of this Article with respect to the computation and levy of the tax owed by the operator. From the time of recordation of the Certificate of Delinquency and Transient Occupancy Tax

Lien, the amount required to be paid, together with penalties and continually accruing interest, shall constitute a lien upon all real property within Tulare County owned by the operator or thereafter acquired prior to expiration of the lien. Except as otherwise provided in this Article, the lien shall have the force, effect, and priority of a judgment lien and shall continue for ten (10) years from the filing of the Certificate of Delinquency and Transient Occupancy Tax Lien, unless sooner released or otherwise discharged. Within ten (10) years of the date of the recording of the Certificate of Delinquency and Transient Occupancy Tax Lien (or within ten (10) years of the date the last extension of the lien), the Tax Collector may extend the lien by recording either a new or the original certificate in the official records of the County Recorder, and from the time of such recording, the original lien shall be extended for an additional ten (10) years unless sooner released or otherwise discharged. The lien shall not be released or discharged until the delinquent taxes, penalties for delinquency, and costs of collection are fully paid.

(b) At any time within three (3) years after the recordation of a Certificate of Delinquency and Transient Occupancy Tax Lien under subsection (a) above, the Tax Collector may issue a warrant directed to the Sheriff for the enforcement of the lien and the collection of any tax and penalties required to be paid to the County under this Article. 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 a writ of execution. The Tax Collector may pay or advance to the Sheriff such fees, commission, and expenses for services as are provided by law for similar services pursuant to a writ of execution.

(c) In lieu of issuing a warrant under subdivision (b), at any time within the three years after a Certificate of Delinquency and Transient Occupancy Tax Lien is recorded, the Tax Collector may collect the delinquent amount by seizing, or causing to be seized, any property, real or personal, of the operator and sell any non-cash or non-negotiable property, or a sufficient part of it, at public auction to pay the amount of tax due, together with any penalties, interest, and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

(Amended by Ord. No. 3368, effective 10-09-08)

1-05-1450 VIOLATIONS:

(a) Any operator violating any of the provisions of this Article shall be guilty of a misdemeanor and shall be punishable therefor as provided by section 125 of this Ordinance Code.

(b) Any operator or other person who fails or refuses to register as required in this Article, or to file any return required to be filed, or who fails or refuses to file a supplemental return or furnish any other data required by the Tax Collector, or who files a false or fraudulent return or claim under this Article, is guilty of a misdemeanor and shall be punishable therefor as provided by section 125 of this Ordinance Code.

(c) Any person required to make, render, sign or verify any report, return or claim who makes any false or fraudulent report, return or claim with intent to defeat or evade the determination of any amount due required by this Article to be made, is guilty of a misdemeanor and shall be punishable therefor as provided by section 125 of this Ordinance Code.

In addition, the Tax Collector may pursue on behalf of the County, any civil or administrative remedy otherwise available for failure to comply with the requirements of this Article. If the County prevails, the County shall be entitled to recover any costs, including attorneys' fees, personnel costs or other expenses incurred because of failure to comply with the requirements of this Article. Failure to pay such costs upon demand shall be grounds for revocation of an operator's certificate of registration issued under section [1-05-1380](#).

(Amended by Ord. No. 3368, effective 10-09-08)