



MEMORANDUM

from the office of
PLACER COUNTY COUNSEL
Extension 4044

TO : Board of Supervisors

FROM : Valerie D. Flood, Supervising Deputy County Counsel,
on behalf of Clark Moots, Director of Administrative Services VdF

DATE : August 10, 2010.

RE : Transient Occupancy Tax Continued Appeal Hearing
Exclusive Resorts, LLC, Appellant.

Action Requested & Recommended: The Board is asked to adopt the resolution of decision and findings as attached hereto regarding the hearing on the appeal of Exclusive Resorts, LLC, of the Director of Administrative Services' TOT determination.

Background: At the first day of this bifurcated hearing your Board considered the issue of whether or not the Exclusive Resorts business model is subject to the Placer County Transient Occupancy Tax Ordinance. Your Board upheld the determination of the Director of Administrative Services on this point and found that Exclusive Resorts is subject to Placer County's TOT ordinance. At the continued date of the hearing your Board decided the issue of the amount of TOT tax, penalties, and interest to be assessed against Exclusive Resorts. Your Board upheld the determination of the Director of Administrative Services on these points.

The testimonial and legal argument portions of the hearing were concluded. The Board voted. Placer County Code section 4.16.110 provides that the Board shall make findings. Those proposed findings along with a written decision formally concluding this matter is attached.

Counsel for Exclusive Resorts has had an opportunity to review the attached resolution to approve or request changes as to form. All changes requested by Exclusive Resorts have been made and are encompassed in the attached. Otherwise, Exclusive Resorts reserves all objections and arguments on the record. Counsel for Exclusive Resorts was given notice that the department would request that that attached be adopted on the Board's consent agenda for the August 10, 2010 meeting.

Attachments:
Resolution of Decision and Findings.

Before the Board of Supervisors County of Placer, State of California

In the matter of:

Resol. No: _____

A Resolution of Decision and Findings
Regarding The Appeal Hearing of Exclusive
Resorts of the Director of Administrative
Services Determination of the Amount of
Transient Occupancy Tax to be Assessed.
(Placer County Code, Article 4.16)

The following RESOLUTION was duly passed by the Board of Supervisors of
the County of Placer at a regular meeting held _____ by the
following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

CHAIRMAN, BOARD OF SUPERVISORS

Attest:
Clerk of said Board

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Whereas, A transient occupancy tax (TOT) is authorized under State Revenue and Taxation Code Section 7280 et. seq. and Placer County Code (PCC), Article 4.16;

Whereas, PCC Article 4.16, sections 4.16.010 through 4.16.150, contains the provisions applicable to determinations regarding the TOT in Placer County;
Whereas, Exclusive Resorts L.L.C. appealed to the Placer County Board of Supervisors the tax assessment decision of the Director of Administrative Services;

Now, therefore, Be It Resolved, by the Board of Supervisors of the County of Placer which makes and issues the following decision and findings on the appeal of Exclusive Resorts:

The appeal by Exclusive Resorts of the Director of Administrative Services' determination regarding Transit Occupancy Tax for the 2004 through 2007 tax years is denied.

For the 2004 through 2007 tax years, Exclusive Resorts, its business model, and its business operations are properly subject to the Placer County Uniform Transient Occupancy Tax Ordinance, Placer County Code Article 4.16.

For the 2004 through 2007 tax years, the Placer County TOT assessment against Exclusive Resorts is confirmed and ordered in the following amounts: \$302,579.00 in taxes, \$60,516.00 in penalties, and \$143,074.00 in interest as of September 30, 2009, with interest continuing to accrue at the rate of one and one-half percent per month on any delinquent tax, exclusive of penalties, until the assessment is paid.

Pursuant to Placer County Code section 4.16.140, any tax, including penalties and interest, required to be paid under the provisions of the Article 4.16 shall be deemed a debt owed by the transient or operator to the county. Any person or entity owing money to the county under the provisions of Article 4.16 shall be liable to an action brought in the name of the county for the recovery of such amount.

The hearing in this matter is now concluded. This decision is the final action of the County of Placer on Exclusive Resorts administrative appeal and the tax assessment, interest, and penalties assessed are now due and payable. The time within which judicial review may be sought concerning this decision is governed by California Code of Civil Procedure section 1094.6.

The findings contained below are based on the Board of Supervisors consideration of the administrative record in this matter.

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Background Findings

1. The Placer County Transient Occupancy Tax, as set forth in the Placer County Code Article 4.16¹, (**hereinafter "TOT"**) is a tax levied by the County for the privilege of occupying a room or other living space for a period of 30 days or less in a hotel or other lodging located in Placer County.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. Information available to the public regarding the County's TOT program.

2. Exclusive Resorts (**hereinafter "ER"**), a membership resort club, leases or owns through related and/or third party companies numerous real properties throughout the world including 15 such properties in Placer County.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts.

3. Exclusive Resorts is self described as a luxury destination club and purveyor of private vacation homes.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts.

4. Exclusive Resorts club members (**hereinafter "members"**) purchase 30 year memberships by paying an initial one-time "membership fee", a portion of which is the non-refundable "transfer fee", and additionally paying dues on an annual basis.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts.

5. Exclusive Resort memberships are governed by a Club Membership Agreement.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts.

6. In exchange for payment of membership fees and annual dues, a member receives the right to stay at or use any available property that is either owned or leased by ER or an entity affiliated with ER, and obtain services related to that stay.

¹ All references to code sections in Article 4.16 are from the Placer County Code, Article 4.16, unless noted otherwise.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts.

7. The length of a members stay at a single property is capped at a predetermined number of days. The total number of days per year that a member may stay at all ER properties combined is capped at a predetermined number of days. Both of these caps are identified numerically in the membership agreement and can vary depending on the member's particular level of membership.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts.

8. In general, a property can be booked for no more than 14 days at one time unless the member pays an additional cost of \$3,000 per night.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts.

9. The Exclusive Resorts business model involves the payment of consideration by its members to Exclusive Resorts, in the form of fees and dues, in exchange for the right to occupy certain real properties owned or leased by Exclusive Resorts in Placer County for less than 30 days.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts. The County Auditor's TOT Audit. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

10. Placer County officials did not know of the existence of the Exclusive Resorts operations in Placer County until a complaint was made to the County by a citizen that Exclusive Resorts was operating in Placer County without paying TOT.

Evidence: Supporting testimony as contained in hearing transcripts. A County employee working in the Tahoe area received the citizen complaint, forwarded that information onto the County department responsible for TOT administration, which followed up with an investigation.

Placer County Code Article 4.16 Findings

11. The overnight lodgings in Placer County that Exclusive Resorts makes available for use by its members are "Hotels" as that term is defined in section 4.16.020.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of

Administrative Services, and/or designee. The section 4.16.020 definition is unambiguous and intentionally broad and encompasses a wide range of accommodation situations. The ER lodgings are fixed structures occupied or intended to be occupied by ER members for lodging or sleeping purposes. "Hotels" expressly include lodging houses, private clubs, and other similar structures.

12. The clear language and intent of the Placer County TOT ordinance does not limit the term "private clubs", as contained in section 4.16.020, to only those private organizations which also operate traditional hotels.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

13. The Placer County TOT ordinance includes business models in addition to those that the general public might typically consider to be a hotel accommodation.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

14. The use of ER lodgings by its members is an "Occupancy" as that term is defined in section 4.16.020.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee. The section 4.16.020 definition is unambiguous and intentionally broad and encompasses a wide range of situations. ER members use or possess, and under the membership agreement with ER have the right to the use for a limited period of time available ER lodgings in the Placer County area for dwelling, lodging or sleeping purposes.

15. Exclusive Resorts is an "Operator" as that term is defined in section 4.16.020.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee. The section 4.16.020 definition is unambiguous and intentionally broad and encompasses a wide range of situations. ER is a proprietor of the lodgings used by ER members, variously in the capacity of owner, lessee, sublessee, mortgagee in possession, or any other capacity.

16. Exclusive Resorts and its members are each "Persons" as that term is defined in section 4.16.020.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

17. The fees and dues paid by members to Exclusive Resorts constitutes "Rent" for the use of ER lodgings as that term is defined in section 4.16.020.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Information available to the public regarding the County's TOT program. The County Auditor's ER TOT Audit. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee. The section 4.16.020 definition is unambiguous, intentionally broad, encompasses a wide range of situations, and includes any type of arrangement in which an entity receives money or other consideration in exchange for the provision of lodging. Exclusive Resorts charges and ER members pay a fixed sum of money in the form of the membership fee (non-refundable portion) and annual dues, and in exchange for this consideration members obtain lodging in ER properties, and services related to that occupancy. It is admitted that this exchange constitutes "consideration" as that term is defined at law. The fees and dues are paid by ER members in the form of cash or credit. As set forth in the ordinance, the 12/26/2006 Tax Administrator Guidance to all TOT Certificate Holders available to the public on the Placer County website, and testimony at the hearing, generally some services are related to the occupancy and are included as TOT taxable and some services are not. TOT taxable services are those typically provided by "hotels" such as property management, concierge, and housekeeping, and are mandatory fees to the member. These services are a mandatory charge that must be paid by the transient/ member in order to stay in the lodging, regardless of whether the service is used by the transient/ member. TOT non-taxable services are additional or third party provided items such as a special package rates, ski passes, other recreational activities, or other activity or additional services. The services provided in exchange for the fees and dues paid by ER members do not include such additional services. If an ER member desires those additional services payment is made outside of the dues and fees. Exclusive Resorts provide to the County a separate statement of any alleged charges for third party services that should be excluded from the calculation of "Rent". Thus the entire amount of consideration paid towards the use of Placer County properties is presumed to be "rent".

18. Property management, concierge, and housekeeping services are typically provided by traditional "hotels" to transients as a service included with the occupancy and paid for as part of the rent charged to transients.

Evidence: Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The Investigation and determination by the

County Tax Administrator, the County Director of Administrative Services, and/or designee.

19. The cost of any mortgage underlying a traditional hotel property is typically paid for as part of the rent charged transients.

Evidence: Supporting testimony as contained in hearing transcripts. The investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

20. ER members staying at Exclusive Resort properties in Placer County are "Transients" as that term is defined in section 4.16.020.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee. The section 4.16.020 definition is unambiguous and intentionally broad and encompasses a wide range of situations. ER members are persons who actually occupy or are entitled to occupancy ER lodgings by reason of the ER membership agreement, for a period of less than thirty consecutive calendar days.

21. ER members, as transients and occupiers, are subject to pay a TOT for staying in "Hotels" located in Placer County.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

22. The exclusive Resort lodgings that are the subject of this appeal are all located in the North Lake Tahoe Transient Occupancy area, as that area is described in section 4.16.030. The rate of TOT payable in the North Lake Tahoe Transient Occupancy area is 10% of the rent charged.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

23. At no time have ER members paid TOT either to Placer County directly or to and through Exclusive Resorts.

Evidence: Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

24. Exclusive Resorts, as the operator, had an affirmative duty pursuant to section 4.16.050 to collect Placer County TOT from its members and remit that TOT to Placer County.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts.

25. Exclusive Resorts has not collected Placer County TOT from its members nor tendered TOT to Placer County.

Evidence: Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

26. Exclusive Resorts has not separately stated to Placer County the amount of TOT and the amount of the rent charged to its members.

Evidence: Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

27. Exclusive Resorts has not registered its lodgings with the Placer County tax administrator pursuant to section 4.16.060, and thus has not obtained a transient occupancy registration certificate which should be posted on the premises.

Evidence: Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

28. Exclusive Resorts has not, on a quarterly or monthly basis, made a return to the Placer County tax administrator which shows whether or not any rents were charged, and if so, the total thereof and the amount of tax collected for transient occupancies pursuant to section 4.16.070.

Evidence: Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

29. Exclusive Resorts has not, on a quarterly or monthly basis, made a return to the Placer County tax administrator which shows any claims of exemptions for that time period.

Evidence: Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

30. Exclusive Resorts is subject to payment of the Original Delinquency Penalty of ten percent of the amount of the tax, in addition to the amount of tax, pursuant to section 4.16.090.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee. Exclusive Resorts admits that it has not remitted any TOT imposed by the Placer County Code within the time required. Thus, the penalty is applicable.

31. Exclusive Resorts is subject to payment of the Continued or second Delinquency Penalty of ten percent of the amount of the tax, in addition to the amount of the tax and the ten percent Original Delinquency Penalty first imposed, pursuant to section 4.16.090.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee. Exclusive Resorts admits that it has not remitted any TOT imposed by the Placer County Code within the time required. Thus, the second penalty is applicable.

32. Exclusive Resorts is not subject to payment of the Fraud Penalty of twenty five percent of the amount of the tax, pursuant to section 4.16.090.

Evidence: The investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee. There was no evidence of actual fraud on ER's behalf.

33. Lack of conduct in support of the Fraud Penalty, such as no intent to willfully evade payment of the TOT, no misrepresentations regarding the nature and elements of the ER membership program, or failure to cooperate with the County during the tax audit, does not necessarily mitigate against the applicability of the Original Delinquency Penalty or the Continued Delinquency Penalty.

Evidence: Plain language of the County TOT ordinance. The investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

34. Exclusive Resorts is subject to payment of interest at the rate of one and one-half percent 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 pursuant to section 4.16.090.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee. Exclusive Resorts

admits that it has not remitted any TOT imposed by the Placer County Code within the time required. Thus, the interest provision is applicable.

35. The penalties and interest imposed upon Exclusive Resorts shall become a part of the TOT owing herein pursuant to section 4.16.090.

Evidence: Plain language of the County TOT ordinance. Exclusive Resorts admits that it has not remitted any TOT imposed by the Placer County Code within the time required. Where the penalties and interest are imposed on Exclusive Resorts, they shall become part of the TOT required to be paid.

36. Exclusive Resorts failed or refused to collect, report and remit the tax or any portion thereof as required by section 4.16.100.

Evidence: Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

37. The Placer County tax administrator reasonably proceeded in such a manner as he/she deemed best to obtain facts and information on which to base an estimate of the tax due pursuant to section 4.16.100.

Evidence: Plain language of the County TOT ordinance. Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts. Notices, records, and other information provided by the County to ER. The County Auditor's ER TOT Audit. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

38. Because Exclusive Resorts failed to collect TOT from its member transients, and remit it to Placer County, Exclusive Resorts is liable for payment of the TOT to the County pursuant to section 4.16.100.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. Exclusive Resorts admits that it has not collected TOT from its members.

39. Based on the facts and information obtained, the Placer County tax administrator reasonably determined and assessed against Exclusive Resorts the tax, interest and penalties provided for by the Placer County TOT ordinance (4.16.100).

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

40. Pursuant to section 4.16.100, the Placer County tax administrator gave notice of the amount of taxes, penalties, and interest assessed to Exclusive Resorts in a notice of assessment dated 11/5/08.

Evidence: Notices, records, and other information provided by the County to ER.

41. Pursuant to section 4.16.100, where the records Exclusive Resorts produced were not reasonably auditable with respect to determining the rent or tax, then the TOT tax, interest and penalties would have been properly levied against ER based on the average room rate and occupancies for similar properties within the same area during the audit period.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The records provided by Exclusive Resorts did not include a line item easily attributable to "rent", nor did ER identify the consideration paid by its members for use of ER properties situated in Placer County. The County auditor also performed the alternative calculation method set forth in section 4.16.100.C, and identified similar properties within the same area during the audit period.

42. If section 4.16.100.C's average room rate and occupancies for similar properties within the same area alternative methodology had been used to calculate ER's tax liability, ER's tax liability would have been significantly greater than the amount actually levied on Exclusive Resorts.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

43. At no time did Exclusive Resorts submit a request in writing to the county executive officer for a waiver of up to \$5000.00 in interest and/or penalties pursuant to section 4.16.110.

Evidence: Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

44. Pursuant to section 4.16.110, Exclusive Resorts made an application in writing to the director of administrative services for a hearing on the amount of taxes, penalties, and interest assessed in the notice of assessment.

Evidence: Business & financial records and other information provided by ER to the County. Notices, records, and other information provided by the County to ER.

45. Pursuant to section 4.16.110, prior to and at the hearing set before the director of administrative services, Exclusive Resorts appeared and offered evidence as to why the tax, interest and/or penalties should not be so assessed.

Evidence: Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts. Notices, records, and other information provided by the County to ER. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

46. Pursuant to section 4.16.110, after the hearing before the director of administrative services, the director of administrative services determined the amount of TOT to be remitted and gave written notice to Exclusive Resorts of such determination.

Evidence: Notices, records, and other information provided by the County to ER. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

47. Pursuant to section 4.16.110, Exclusive Resorts appealed the decision of the director of administrative services with respect to the amount of tax, interest and/or penalties assessed, to the Placer County Board of Supervisors.

Evidence: Business & financial records and other information provided by ER to the County. Notices, records, and other information provided by the County to ER.

48. Pursuant to section 4.16.110, an appeal hearing was timely scheduled and held before the Placer County Board of Supervisors at a regularly scheduled meeting. Exclusive Resorts was given notice and attended the hearing.

Evidence: Notices, records, and other information provided by the County to ER. Supporting testimony as contained in hearing transcripts.

49. Pursuant to section 4.16.110, at the hearing before the Placer County Board of Supervisors, Exclusive Resorts was represented by counsel, presented witnesses and testimony, cross-examined all other witnesses, and presented oral and written documents and evidence on the issues.

Evidence: Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts.

Additional Findings

50. The express language of the Placer County TOT Ordinance reasonably put Exclusive Resorts on notice, whether it be actual, constructive, or inquiry notice, that the ordinance would or could apply to its business operations in Placer County.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts.

51. The outreach efforts of the County tax administrator regarding the County's TOT program reasonably put Exclusive Resorts on notice, whether it be

actual, constructive, or inquiry notice, that the ordinance would or could apply to its business operations in Placer County.

Evidence: Information available to the public regarding the County's TOT program. Supporting testimony as contained in hearing transcripts.

52. Exclusive Resorts representatives actually reviewed Placer County's TOT ordinance prior to commencing business operations in Placer County, and thus had actual notice of the ordinance's provisions.

Evidence: Supporting testimony as contained in hearing transcripts.

53. At no time did Exclusive Resorts representatives contact Placer County representatives to inquire about the TOT ordinance or to discuss whether the County's TOT ordinance might apply to their operations in Placer County.

Evidence: Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

54. The Placer County Auditor performed an audit on ER's delinquent taxes and determined the total amount of tax, interest and penalties reasonably owed by ER for the 2004 through 2007 tax years.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

55. While Exclusive Resorts maintains that the exchange of consideration between it and its members does not constitute rent under the County TOT ordinance, ER has not objected to the mathematical calculations as performed by the Auditor in its tax audit.

Evidence: Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts.

56. The County Auditor's audit and rent and tax calculation methodology for exclusive Resorts was reasonable and appropriate.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit. Any complexity in the methodology used by the County Auditor to calculate the rental value of the Exclusive Resorts Tahoe properties that the TOT was based on, was necessitated by Exclusive Resorts accounting practices, the nature of the records Exclusive Resorts provided to the County Auditor, and the need to identify a rental value that had a rational relationship to member use of the Placer County properties only. The mathematical formula used creates a relationship between actual occupancies at Exclusive Resorts Placer County lodgings, with actual membership levels and therefore revenue paid by the

occupants, and pro rates the revenue received by Exclusive Resorts from its members to identify an amount that represents those members' use of the Placer County properties only. The Auditor worked with ER to obtain the necessary information and records, and calculated the amount of rent paid by Exclusive Resorts members utilizing these and other records. At no time has Exclusive Resorts provided to the County an alternative valuation or valuation method for determining the taxable rent charged or TOT due to Placer County for the 2004-2007 tax years.

57. The County Auditor, through the tax audit, found a reasonable nexus between an ER member's annual dues and the non-refundable portion of the membership fee and "rent" as defined in the Placer County TOT ordinance.

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit.

58. The County Auditor, through the tax audit, found a rational relationship between member occupancy of ER facilities in Placer County to the sums attributed as "rent".

Evidence: Business & financial records and other information provided by ER to the County. Information publically available on the ER website. Supporting testimony as contained in hearing transcripts. The County Auditor's ER TOT Audit.

59. That the County Auditor's specific rent and tax calculation methodology may have been a complicated one does not obviate the fact that Exclusive Resorts was put on notice that its business operations in Placer County would or could be subject to TOT liability.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. Information available to the public regarding the County's TOT program. Exclusive Resorts was put on advance notice that its business operations would or may be subject to TOT, regardless of whether it had advance notice of the specific, ultimate calculation to be used to determine the tax liability in its situation.

60. That the County Auditor's specific rent and tax calculation methodology may have been a complicated one does not obviate the fact that the Placer County TOT ordinance prescribes a standard sufficiently definite to be understandable to the average person who desires to comply with it.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. Information available to the public regarding the County's TOT program. Exclusive Resorts was put on advance notice that its business operations would or may be subject to TOT and what steps it should have taken to comply with the ordinance, regardless of whether it

had advance notice of the specific, ultimate calculation to be used to determine the tax liability in its situation.

61. The Placer County TOT ordinance prescribes a standard sufficiently definite to be understandable to the average person who desires to comply with it.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. Information available to the public regarding the County's TOT program. Exclusive Resorts was put on advance notice that its business operations would or may be subject to TOT and what steps it should have taken to comply with the ordinance.

62. The Placer County TOT ordinance does not authorize or encourage arbitrary and discriminatory enforcement.

Evidence: Plain language of the County TOT ordinance. Supporting testimony as contained in hearing transcripts. Notices, records, and other information provided by the County to ER. Information available to the public regarding the County's TOT program. The County Auditor's ER TOT Audit. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee. There have been no specific allegations of arbitrary or discriminatory enforcement of the TOT ordinance by the County.

63. The Exclusive Resorts business model and properties are not a "Time-share estate", as that term is defined by Revenue and Taxation code section 7280 and Business and Professions Code section 11212.

Evidence: Plain language of the statute. Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts.

64. The Exclusive Resorts business model and properties are not a "Membership camping contract", as that term is defined by Revenue and Taxation code section 7280 and Civil Code section 1812.300.

Evidence: Plain language of the statute. Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts.

65. Traditional hotels pay real property taxes to Placer County based on the assessed value of the hotel property in addition to collecting TOT from their transients.

Evidence: Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

66. Traditional hotel operations pay sales taxes on items purchased in Placer County in addition to collecting TOT from their transients..

Evidence: Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

67. The ER membership agreement does not create a co-tenancy arrangement between ER and its members.

Evidence: Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

68. The relationship between ER and its members is not legally analogous to that of a property owner and a family member of the property owner who stays at the property.

Evidence: Business & financial records and other information provided by ER to the County. Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

69. By not complying with the County's TOT ordinance, Exclusive Resorts obtains an unfair business advantage over similarly situated hotels, resorts, and providers of accommodations in the Tahoe area.

Evidence: Supporting testimony as contained in hearing transcripts. The Investigation and determination by the County Tax Administrator, the County Director of Administrative Services, and/or designee.

