

PLACER COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT

MEMORANDUM

TO: Honorable Board of Supervisors

FROM: Jerry Gamez, Director of Administrative Services *J.A.*

DATE: July 23, 2013

SUBJECT: Introduce an Ordinance Amending Article 4.16 of the Transient Occupancy Tax Code.

ACTION REQUESTED

Introduce an Ordinance Amending Article 4.16 of the Transient Occupancy Tax Code, regarding Definitions, Imposition Amounts, Exemptions, Reporting, Tax Determination, Waiver and Appeal Process, Right of Inspection, and Violations.

BACKGROUND

The County of Placer collects a transient occupancy tax on occupancy of overnight lodging within the unincorporated areas of the County of Placer. The Transient Occupancy Tax (TOT) rate for Placer County as a whole is eight percent, but in 1996 the rate was increased by two percent to ten percent in that portion of Placer County described as the "North Lake Tahoe Transient Occupancy Tax Area." The additional rate was subsequently extended by voters in 2002 and was due to expire on September 30, 2012, unless an additional extension was approved by voters during the June 5, 2012 Presidential Primary Election.

As a result of June 2012 election, Measure F, the North Lake Tahoe Transient Occupancy Tax Area initiative was approved by voters and an update to the Ordinance to extend the TOT sunset date from September 30, 2012 to September 30, 2022 is required. In addition, the Ordinance includes updates to certain areas that were not clearly defined and improve or streamline the County's operations and functions pertaining to the collection, tax determination and appeal process. Input was solicited from Transient Occupancy Tax certificate holders via U.S Mail, email, and community outreach meetings. These recommendations were reviewed by department staff, the Auditor-Controller's Office, County Executive Staff and County Counsel and the Ordinance has been updated as suggested.

FISCAL IMPACT

There is no fiscal impact related to this action.

Cc: David Boesch, County Executive Officer
Andrew Sisk, Auditor-Controller
Nicole Howard, Assistant Auditor-Controller
Jennifer Merchant, Principal Management Analyst
Allison McCrossen, Budget Analyst
Melissa Nunnink, Administrative & Fiscal Operations Manager
Virginia Meyers, Revenue Services Manager

Attachment

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

In the matter of: AN ORDINANCE AMENDING
ARTICLE 4.16 OF THE UNIFORM TRANSIENT
OCCUPANCY TAX CODE, REGARDING
DEFINITIONS, IMPOSITION AMOUNTS,
EXEMPTIONS, REPORTING, TAX DETERMINATION,
WAIVERS AND APPEAL PROCESS, RIGHT OF
INSPECTION, AND VIOLATIONS.

Ord. No: _____

First Reading: _____

The following Ordinance 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

The Board of Supervisors of the County of Placer, State of California,
does hereby ordain as follows:

Section 1: That Article 4.16, Section 4.16.020 Definitions is hereby amended as follows:

* * * * *

“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. Where 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, unless the principal collects rent outside of the managing agents' defined agreement in which case said principal shall be subject to all provisions of the "Uniform Transient Occupancy Tax Ordinance of the County of Placer."

* * * * *

"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, property and services of any kind or nature without any deduction there from whatsoever. Rent does not include any Additional items included in a special package rate, such as ski passes or other Recreational or other activity or additional services, as long as the operator separately states the rent and tax from other amounts on all receipts and books of record. If additional benefits or services are not stated separately as indicated above, the entire amount shall be presumed to be rent. Required and collected amounts for room-related fees and services are subject to Transient Occupancy Tax.

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Section 2: That Article 4.16, Section 4.16.030 Imposition – Amounts –Where Payable is hereby amended as follows:

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B. Effective October 1, ~~2002~~ **2012** and sunseting September 30, 2012 **2022**, for the privilege of occupancy in any hotel located in that portion of Placer County legally described in subsection D of this section as the "North Lake Tahoe Transient Occupancy Tax Area," each transient is subject to and shall pay an additional 2% tax for a total tax in the amount of ten (10) percent of the rent charged by the operator. The two percent increase incorporated herein is a general tax.

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Section 3: That Article 4.16, Section 4.16.040 Exemptions from Tax is hereby amended as follows:

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~~A. Upon completion of an exemption claim form pursuant to subsection B of this section, no tax shall be imposed upon any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.~~

~~B. No exemption shall be granted under this section unless a claim for exemption, in the form prescribed by the Tax Administrator, is executed by the transient under penalty of perjury and filed with the operator at the time agreement for occupancy is entered into. (Ord. 5006-B (part), 1999: prior code § 21.4)~~

No tax levied by the article shall be imposed upon any person as to whom, or any occupancy as to which, it is beyond the County's legal authority to impose the tax herein provided:

- a. Any federal or state officer or federal credit union employee when on official business;
- b. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;
- c. Rooms donated to or paid by the Red Cross or other charitable organization for the express purpose of providing temporary emergency shelter;
- d. Complimentary stays where no Rent is received;
- e. The owner of a timeshare estate occupying a room or rooms in a timeshare project, as defined in Business and Professions Code, Section 11212 or its successor statute; or
- f. The owner of a membership camping contract as defined in Civil Code Section 1812.300;
- g. No exemption shall be granted under this section unless a claim for exemption, in the form prescribed by the Tax Administrator, is executed by the transient under penalty of perjury and filed with the operator at the time agreement for occupancy is entered into. (Ord. 5006-B (part), 1999: prior code § 21.4) Transient Occupancy Tax Claim of Exemption Form can be found at: www.placer.ca.gov/departments/admin/revenue/forms

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Section 4: That Article 4.16, Section 4.16.070 Reports and Remittance is hereby amended as follows:

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C. For the purposes of this section, "on or before" shall be interpreted as (1) hand delivery; or (2) postal delivery of a properly stamped and addressed envelope containing the return and full amount of the tax to the United States Postal Service; **or (3) fax or email.** Delivery to the Postal Service must be verified by cancellation by the Postal Service showing a postmark date no later than midnight on the date the tax is due. If the due date of the tax falls on a **Sunday United States Post Office Closure date,** the tax due date shall be the next business day (excluding federal holidays.) Private postal meter strips and dates shall not be considered evidence of delivery to the United States Postal Service. **Fax or email delivery shall be evidence by the date stamp of delivery.** (Ord. 5046-B, 2000; Ord. 5006-B (part), 1999: prior code § 21.7)

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Section 5: That Article 4.16, Section 4.16.100 Determination of Tax by Tax Administrator Upon Failure of Operator to Collect and Report Tax – Notice and Hearing is hereby amended as follows:

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B. For purposes of determining the liability of any operator failing or refusing to file a return, there shall be a rebuttable presumption that liability is the same as in the maximum liability quarter for the previous fiscal year.

Additionally, all civil and criminal penalties and remedies provided for in Section 4.16.150 of this code shall apply.

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Section 6: That Article 4.16, Section 4.16.110 Waivers – Appeal Process is hereby amended as follows:

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A. Waiver of Interest and/or Penalties ~~not to exceed five thousand dollars (\$5,000.00).~~

1. An operator may request a waiver of interest and/or penalties as provided for in Sections ~~4.16.080(A),(B), and (D) and Section 4.16.090(A), (B), and (D) and 4.16.100 (C)~~ by submitting a request for waiver in writing to the County Executive Officer or his or her designee within seven working days after the operator is notified in writing by the Tax Administrator of the interest and penalty assessment.
2. The County Executive Officer or his or her designee shall issue a written decision within ten (10) working days after receipt of the request. Upon receipt of the application for waiver, the County Executive Officer or his or her designee may, for good cause, waive the interest and penalties in an amount not to exceed five thousand dollars (\$5,000.00). The amount determined to be due shall be immediately due and payable unless an appeal is taken as provided in Section ~~4.16.100(C)~~ 4.16.110 (B).
3. **Waiver requests of interest and/or penalties exceeding five thousand dollars (\$5,000.00) may only be waived, for good cause, by the County Executive Officer. The County Executive Officer shall issue a written decision within ten (10) working days after receipt of application for waiver. The amount determined to be due shall be immediately due and payable unless an appeal is taken as provided in Section 4.16.110 (B).**

B. Appeal of Determination of Tax, Penalties and Interest by Tax Administrator.

1. An operator may, within seven working days after the serving or mailing of the notice of assessment of taxes, penalties, and interest provided for under Section 4.16.090(A) make application in writing, **by letter, email or faxed letter** to the Director of Administrative Services for a hearing **redetermination on the amount assessed. The operator must include a completed return at the time the request for redetermination and offer evidence as to why the tax, interest and/or penalties should not be so assessed.** If application for a hearing **redetermination on the amount assessed** is not made within the time prescribed, the tax, interest and penalties, as determined by the Tax Administrator shall become final and conclusive and immediately due and payable.
2. If such application is made, the Director of Administrative Services shall give no less than ten (10) working days' written notice of the time and place for the hearing. **by certified mail, to the operator of his or her determination. The amount determined to be due shall be payable after fifteen (15) days unless a written appeal is filed.**
3. ~~At such hearing, the operator may appear and offer evidence as to why the tax, interest and/or penalties should not be so assessed. After such hearing, the Director of Administrative Services or his or her designee shall determine the proper amount to be remitted and shall thereafter give written notice by certified mail, within ten (10) working days of hearing, to the operator of such determination. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in subsection C of this section.~~

C. Appeal of Decision of the Director of Administrative Services.

1. Any operator aggrieved by any decision of the Director of Administrative Services with respect to the amount of such tax, interest and/or penalties, as assessed under the provisions of Section 4.16.080 or 4.16.090, may appeal to the Board of Supervisors **County Executive Officer or his or her designee** by filing a written notice of appeal with the clerk of the Board of Supervisors within ten (10) working days of the mailing of the determination by the Director of Administrative Services.
2. If an appeal is filed, the clerk of the Board of Supervisors **County Executive Officer or his or her designee** shall schedule a hearing on the appeal before the Board of Supervisors at a regularly scheduled meeting of the board within thirty (30) days from the date of receipt of the appeal.
3. Once the Clerk of the Board **County Executive Officer or his or her designee** has scheduled the appeal hearing, written

notification thereof shall be given to the appellant operator by certified mail.

4. At the hearing, the appellant operator shall have the right to testify, to be represented by counsel, to present witnesses on his or her own behalf, to cross examine all other witnesses and to present oral and written documents and evidence on the issues.
5. Within thirty (30) days of the conclusion of the hearing, the Board of Supervisors County Executive Officer or his or her designee shall present his or her make findings and recommendations issue a decision concerning the appeal to the Placer County Board of Supervisors. Any amount determined to be due shall be due and payable immediately upon the decision of the board (Ord. 5207-B, 2002; Ord. 5006-B (part), 1999; prior code § 21.11)
6. The Board of Supervisors shall review the findings and recommendation of the CEO or designee and issue a decision concerning the appeal and may sustain, modify or reverse the recommendation. The operator shall have the right to argue their position, to be represented by counsel, and to refer to documents or testimony given at the hearing held by the CEO or designee but shall not be allowed to introduce any new documents, testimony or other evidence unless the party proffering the new evidence can show good cause as to why the new evidence was not presented at the hearing before the CEO or designee. Any amount determined to be due shall be due and payable immediately upon the decision of the Board. Said determination shall be the final level of administrative appeal. (Ord. 5207-B, 2002; Ord. 5006-B (part), 1999; prior code § 21.11)

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Section 7: That Article 4.16, Section 4.16.120 Duty to Keep Records – Right of Inspection is hereby amended as follows:

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A. It shall be the duty of each operator and "Transient Occupancy Tax Registration Certificate" holder to keep and preserve for a period of ~~three~~ **four** years all records as may be necessary to determine the amount of such tax as he or she may have been liable to collect and pay to the county, commencing on July 9, 2014. Until July 9, 2014 the retention period shall remain three years.

B. The Tax Administrator or his or her designee, shall have the right at all times reasonable to inspect all books and records of the operator relating to the operation of the hotel, including, but not limited to, the following:

1. General ledgers or financial statements.

2. Subsidiary ledgers and records.
3. Original documents and records including, but not limited to:
 - a. Daily record of room occupancies.
 - b. A written record of each occupancy charge for which an exemption is claimed, including the name of the person occupying the room, dates of occupancy and reason(s) for and documentation in support of claims for exemption.
 - c. **All records kept outside of Placer County must either be produced for review at a designated Placer County Facility or, upon request, at a location outside of Placer County at the operator's expense.**
 - d. **All tax returns and information furnished by any operator or "Transient Occupancy Tax Registration Certificate" holder pursuant to this article shall be confidential and shall not be open to public inspection nor the specific contents thereof disclosed by any officer or employee except as necessary in the performances of official duty pursuant to this article, or in the course of any proceedings, hearings, and litigation involving the existence or amount of tax liability of such operator, or with the written consent of the operator, or an authorized representative. Said documents may be retained in electronic form.** (Ord. 5006-B (part), 1999: prior code § 21.12)

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Section 8: That Article 4.16, Section 4.16.150 Violations is hereby amended as follows:

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Any violation of the provisions of this article shall be punishable as provided by Article 1.24 of ~~this code~~ **the Placer County Code**, or as required by Penal Code Section 424. (Ord. 5006-B (part), 1999: prior code § 21.15)

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