



MEMORANDUM

from the office of
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Extension 4044

TO : County of Placer Board of Supervisors

FROM : Valerie D. Flood, Supervising Deputy County Counsel,
on behalf of Jerry Gamez, Director of Administrative Services *Valerie D. Flood*

DATE : Appeal Hearing: April 23, 2012.

RE : Transient Occupancy Tax Appeal Hearing
Falcon Lodge, Appellant.

Action Requested: The Board is asked to hear and consider the appeal of Linda and Fred Hodgson, dba Falcon Lodge, ("Appellant") of the Director of Administrative Services' determination that taxes, penalties and interest are owed for the 2008 through 2010 tax years as follows: \$8,347 total, consisting of \$5,053 in taxes, \$1,070 in penalties, and \$1,927.04 in interest (as of 3/31/12, with interest still accruing).

Background:

The Falcon Lodge is a lake front, commercial, motel property located on the south side of North Lake Boulevard (SR 28) in the Kings Beach area. The Falcon Lodge contains 24 guest rooms, one manager's unit, and 31 parking spaces.

This is an appeal of determination that the Falcon Lodge owes additional transient occupancy taxes (TOT). Utilizing the processes and standards set forth in the Placer County TOT Ordinance (Article 4.16 of the Placer County Code), and based on an audit by the Placer County Auditor's Office, the Placer County Tax Administrator and the then Director of Administrative Services both determined that the Falcon Lodge incorrectly reported TOT taxes owing for three tax years.

On September 9, 2011 Appellant was served with an assessment for taxes, penalties and interest due for tax years 2008, 2009, and 2010 in the amount of \$7,703. This assessment was based on an audit conducted by the Placer County Auditor's office. Appellant claimed that many of its guests were not transients as they resided at Falcon Lodge for periods in excess of 30 days. However, the owners could not produce any written agreements as required by the Placer County Code as evidence of such tenancies and, consistent with the County Code, such tenancies were treated as transient.

Due to the absence of written agreements substantiating long term occupancy, the Auditor was unable to rely on the quarterly TOT returns filed on behalf of Falcon Lodge. In addition, when the Auditor attempted to recalculate rent based on the additional records provided by Falcon Lodge, the occupancy rates were inconsistent with the TOT returns filed, and lower than occupancy information for the Falcon Lodge obtained from other sources. Therefore, the Auditor determined Appellant's records were not reasonably auditable, and per TOT Code SEC.4.16.100C, calculated the TOT due for 2008-2010 using the average room rate and occupancies for similar properties within the same area during the audit period.

Appellant thereafter appealed the assessment making the following contentions:

That the Falcon Lodge has taken in the homeless, poor, and anyone in need within the community of Kings Beach for only what the individual could afford to pay. Due to this reason, the Falcon Lodge's room rates were below average and cannot be compared against other motel rates in the area;

That the Falcon Lodge's original lodging receipts are complete and accurate. There is no reason to estimate the amount of TOT owed by using comparisons from nearby motels. Appellant also contends that its quarterly statements show that it has over stated the number of occupants for TOT;

That many occupants have stayed at the Falcon Lodge for over a 30 day period and have made payments on a weekly basis with no contracts or long term lease agreements. Due to these reasons, Mr. Hodgson believes that these occupants are not subject to TOT and stated that he may have over-paid his quarterly TOT due to reporting his long term occupants as short term transient occupants subject to TOT;

That the Auditor-Controller's analysis of the Falcon Lodge's long term occupant exemptions is not valid. This is due to the Auditor-Controller's analysis only listing a portion of the TOT Code Section (SEC.4.16.020) paragraph and not the whole paragraph in its entirety. Mr. Hodgson contends that by applying the entire paragraph, the Falcon Lodge is not subject to the TOT tax, penalties, and interest;

After the administrative appeal hearing the Director of Administrative Services rejected these arguments, and found the Appellant liable for the current assessment amount of \$7,703, representing a combination of transient occupancy taxes, delinquency surcharges, and interest.

Discussion: TOT is a tax levied for the privilege of occupying a room or other living space for a period of 30 days or less in a hotel, motel or other lodging. The tax is directed against the transient occupier of the room or hotel guest. However, the person/entity letting the room has an affirmative duty to collect the tax from the occupant and remit the tax payment to the County. TOT is authorized under State Revenue and Taxation Code Section 7280 and Placer County Code (PCC), Article 4.16. The TOT tax rate in the Tahoe area is 10% of the rent paid for the occupancy. (PCC

secs. 4.16.030 & 4.16.050) If the operator does not collect the tax from the transient, the operator is nonetheless liable for payment of the tax, interest and penalties to the County. (PCC sec. 4.16.100).

There is a 10% penalty for failure to remit the tax when due- the Original Delinquency Penalty. There is a second 10% penalty for failure to remit the tax within 30 days of the original delinquency- the Continued Delinquency Penalty. Interest accrues at one and one-half percent per month on any delinquent tax, exclusive of penalties. (PCC sec. 4.16.090)

The definitions of "hotel", "transient", "occupancy", "operator" and "rent" in the Placer County TOT ordinance are intentionally broad and include a wide range of occupancy situations. These are legal terms of art as used in the ordinance and these terms are not limited to their conventional usage. As relevant to the issues that have been raised by Appellant thus far, PCC section 4.16.020 includes the following definition of the term "Transient" (emphasis added):

"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, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be presumed to be a transient until the period of thirty (30) days has expired.

To avoid being presumed to be a transient during any thirty (30) consecutive day period, the person exercising occupancy rights must, prior to occupancy, enter into a written agreement with the operator. The written agreement shall obligate the person to pay market rate for the occupancy for a period of at least thirty-one (31) consecutive days. If the written agreement requirements are satisfied, the person exercising said occupancy rights shall not be considered a transient under this article and, therefore, shall not be subject to the tax imposed pursuant to Section 4.16.030 of this article. In the absence of said written agreement prior to the commencement of occupancy, the person shall be presumed a transient and subject to the transient occupancy tax until the qualifying period (thirty (30) consecutive days) for nontransient status has been satisfied. On the thirty-first consecutive day, and on each consecutive day thereafter, the transient occupancy tax shall not apply."

Here, the Appellant did not produce any written agreements as required by the code to justify treating its guests as something other than transients. Much of the documentation that was submitted did not establish the term of occupancy one way or the other. Therefore, the statutory presumption in favor transiency prevailed.

As far as reporting requirements and assessment methods, PCC 4.16.100 provides as follows:

"If any operator fails or refuses to collect the tax or any portion thereof required by this article, and within the required time, report and remit as required by this article, the tax administrator 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....

...In the event records are not produced upon request, or such records are not reasonably auditable, tax, interest and penalties will be levied upon the average room rate and occupancies for similar properties within the same area during the audit period.”

The auditor was unable to reliably audit Appellant due to the disjointed, inaccurate and incomplete documentation provided by Appellant. The Placer County Code set forth above specifically authorizes the use of data from comparable sources in such situations and that is what the Auditor did. At the hearing before the Director of Administrative Services, Appellant was given the opportunity to provide updated information regarding the amount owing but failed to do so. Therefore, the amount owing as determined by the Auditor was upheld.

Recommended Action:

At the conclusion of the submission of evidence and argument, the Board is requested to close the evidentiary portion of the hearing, deliberate, and uphold the determination of the Director of Administrative Services by denying the appeal. After rendering its decision on the record, your Board is requested to continue the hearing, returning this matter to staff for drafting and submission of findings consistent with your decision.

Attachments: None. In order to allow the Appellant to timely raise any issues with respect to the confidentiality of the records supporting this appeal, no records are being attached to this agenda item. It is anticipated that the administrative record will otherwise be distributed prior to or at the time of the hearing of this matter.