



COUNTY OF SAN LUIS OBISPO

AUDITOR • CONTROLLER • TREASURER • TAX COLLECTOR

1055 MONTEREY ST. RM. D290
SAN LUIS OBISPO, CA 93408
(805) 781-5831 • FAX (805) 781-5362
<http://sloacttc.com>

JAMES P. ERB, CPA

Auditor-Controller
Treasurer-Tax Collector

James W. Hamilton, CPA
Assistant

Attachment #4

To: Nikki Schmidt, San Luis Obispo County Administrative Office

From: James P. Erb, Auditor-Controller-Treasurer-Tax Collector

Date: June 4, 2015

Subject: Response by the Department of Planning and Building Response to the San Luis Obispo County Grand Jury Report of May 12, 2015 regarding the "Working or Not: Challenges in Enforcing Coastal Vacation Rental Regulations".

The following are the Department's required responses to the Findings, 6-12 and the Recommendations, 3-4:

Findings

Finding - F6. *The County has no proactive programs to identify unlicensed vacation rentals even though officials believe the number may be significant.*

Response: The Department agrees with the finding.

The Tax Collector does not have a program in place to identify unlicensed vacation rentals. However, when unlicensed vacation rentals are identified, they are referred to the Planning Department's Code Enforcement Division.

Finding - F7. *Although the County can identify those homeowners whose transient occupancy tax certificate generates little or no revenue, the county has no policy that limits the renewal of such certificates and associated business licenses.*

Response: The Department agrees with the finding.

The Transient Occupancy Tax certificate is actually a County Business License with the authority to collect Transient Occupancy Tax included with the license. We do not determine eligibility or renewal of a business license and associated authority to collect Transient Occupancy Tax based on annual revenue. Additionally, there are no "minimum activity" requirements for any other type of business. For instance, a restaurant does not need to serve a minimum number of customers in order to maintain their County Business License. Finally, the County Code does not provide for withholding renewal of a license based on lack of activity.

Finding - F8. *There is no termination process for inactive or unused vacation rentals licenses.*

Response: The Department agrees with the finding.
See response to Finding - F7, above.

Finding - F9. *The County loses revenue when property owners or managers operate unlicensed vacation rentals and do not pay relevant taxes and fees.*

Response: The Department agrees with the finding.

Unlicensed vacation rentals do not pay Transient Occupancy Tax. County Business License fees are minimal (annual renewals are being reduced to \$26 in Fiscal Year 15-16) and are used only to recover the costs of licensing. Additionally, there is no sales tax collected on rentals as identified in the schedule on page 9 of the Grand Jury's report.

Finding - F10. *The County loses revenue when individuals obtain transient occupancy tax certificates and then do not use them since this effectively blocks others from obtaining such certificates and using them.*

Response: The Department agrees with the finding.

It is difficult to measure the actual magnitude of this potential revenue source.

Finding - F11. *Increased enforcement of vacation rental license compliance and associated tax and fee revenue collection would generate funds to cover the costs of such activity.*

Response: The Department partially disagrees with the finding.

It is not clear what amount of Transient Occupancy Tax would be collected and at what effort from unlicensed vacation rentals. It would be very time consuming tracking individual vacation rentals that do not comply with the licensing requirements. Further, each rental operator would need to provide adequate records to conduct an audit.

Finding - F12. *The Planning Department and the Office of the Auditor-Controller, Treasurer and Tax Collector (Tax Collector) do not coordinate with one another on issues of unlicensed vacation rentals or with licenses vacation rentals which pay little or no transient occupancy taxes.*

Response: The Department partially disagrees with the finding.

If an unlicensed facility is brought to our attention, we refer it to the Planning Department's Code Enforcement Division. As stated above, neither County Code nor State law set a minimum standard of revenue that must be collected, so this issue has not been discussed with the Planning Department. However, neither the ACTTC nor the Planning Department has programs to actively identify unlicensed vacation rentals

Recommendations

Recommendation - R3. *"The Tax Collector should set a minimum level of revenue to be generated over a set time period (e.g. 2 to 3 years) in order to retain a transient occupancy tax certificate."*

Response: This recommendation will not be implemented because it is unwarranted or unreasonable. The Department agrees with the sentiment behind this recommendation, but the Board of Supervisors has considered this issue in 2012 and found the difficulties of identifying minimum thresholds and the challenges of enforcing them made implementing a recommendation like this impracticable. If there is an opportunity for ordinance changes we will investigate the options available to address this recommendation. So far, we have not been able to identify other counties with minimum revenue requirements to renew a transient occupancy tax certificate/business license.

Recommendation - R4. *The Tax Collector and Planning Department should develop and implement a process to deal with the issues of unlicensed vacation rentals and unused or minimally used transient occupancy tax certificates.*

Response: The recommendation will be partially implemented. We are tracking SB 593, which will require online property managers to submit Transient Occupancy Tax for the vacation rentals they represent. We anticipate this passage of this bill sometime over the next year. As unlicensed rentals are discovered, we will inform the Planning Department's Enforcement Division. See response to Recommendation 3 regarding unused or minimally used transient occupancy tax certificates.

General Comments

The internet vacation rental business seems to have grown rapidly over the last few years and has resulted in a challenge to traditional models for business licensing and tax collection. It is the opinion of the ACTTC that **ALL VACATION RENTALS IN THE UNINCORPORATED AREA OF THE COUNTY MUST COMPLY WITH TITLE 22 AND COUNTY CODE 23**, which at a basic level requires zoning clearance from the Planning Department to obtain a valid business license and transient occupancy tax certificate issued by the Tax Collector. The process is not cumbersome and monthly or quarterly reporting is streamlined. We encourage anyone engaging in vacation rentals to contact our office and we can help them through the process.

The associated problems with licensing and Transient Occupancy Tax collections are being faced by cities and counties throughout the state and are the subject of much discussion. We have carefully considered alternative responses, with emphasis on efficiency, so that we best utilize our limited resources.

We believe the most efficient response at this point is to work for a common approach through a legislative solution, which makes the enforcement and collection process dramatically easier by shifting the burden for Transient Occupancy Tax collection and reporting to the online sites such as Air BnB. We are actively working through the California Association of County Treasurer-Tax Collectors (CACTTC) to push and support legislation which all 58 counties support. Senate Bill 593 as proposed would create a dramatically more efficient system, since the online sites would simply withhold and pay the Transient Occupancy Tax directly, passing the net amount on to their property owners. Then, one company would file a monthly return and remit the Transient Occupancy Tax collectively, rather than hundreds of individual establishments, which must then file individual returns every month.

While the State legislature is currently considering SB 593, alternate models are also being discussed which would shift Transient Occupancy Tax collection for internet rentals to the state level, with different pass-through revenues back to local governments.

In addition to Transient Occupancy Tax collection, the process of enforcing the land use ordinance would become easier with proposed legislation, since online sites would be required to disclose to local governments the names and addresses of those listing their properties. This would make enforcement much more efficient as well.

In any case, we feel it is important to let these efforts develop and reach a conclusion before duplicating efforts by launching a different local approach. If a common statewide solution cannot be achieved through legislation, then the problem falls back to the local governments to address.

We appreciate the Grand Jury's attention to this timely issue. The Grand Jury provides a valuable function and gives elected officials and other governmental management perspectives that are not always as clearly available.