

Memorandum



CITY OF DALLAS
(Report No. A11-010)

DATE: August 12, 2011

TO: Honorable Mayor and Members of the City Council

SUBJECT: Audit of Hotel Occupancy Tax Collection – Short-Term Vacation Rentals¹

Preliminary research of vacation rental websites indicates that residential properties located within the City of Dallas (City) limits are advertised on these websites; however, the City does not currently have processes and procedures in place that specifically address short-term vacation rentals. As a result, it is unlikely that short-term vacation rental properties operating in the City are registered with the City and paying Hotel Occupancy Taxes (HOT). The City Controller's Office and the City Attorney's Office are in the process of researching short-term vacation rental property issues to determine if it is practical and cost effective for the City to implement processes and procedures to improve collection of HOT for these properties.

Short-Term Vacation Rentals

Residential properties rented out by the property owners for short time periods (less than 30 days).

According to the Texas Comptroller of Public Accounts' Tax Policy News – April 2011:

“Texas is seeing an increase in the number of homes offered as lodging accommodations through online social media marketing services. Social media marketing services make renting one’s home easy, efficient, and effective. Individual homeowners and leasing companies market homes and rental property via the Internet to persons seeking a place to stay for business trips, vacations and special events, such as music festivals and athletic contests.”

Short-term vacation rental properties are typically advertised on the Internet with only an e-mail address and/or phone number listed so that interested parties can contact the owner. Therefore, identifying and registering short-term vacation rental property and estimating and/or collecting hotel occupancy taxes are more difficult.

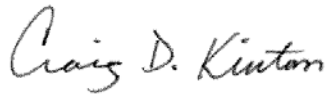
¹ We conducted the Audit of Hotel Occupancy Tax Collection – Short-Term Vacation Rentals under the authority of the City Charter, Chapter IX, Section 3. This audit was added to the Fiscal Year 2011 Audit Plan (Audit Plan) approved by the City Council which provides for such additions to the Audit Plan. This performance audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The objective of the audit was to determine whether the City has processes in place to assure that short-term vacation rental properties are registered with the City and paying appropriate Hotel Occupancy Tax. We interviewed City Controller's Office, Code Compliance, City Attorney, and Sustainable Development and Construction personnel. We also reviewed vacation rental websites, the Texas Tax Code, City Code, and City Controller's Office policies and procedures related to HOT.

To improve their ability to collect HOT for short-term vacation rental properties, other cities, such as Key West, Florida and the City of Encinitas, California, have implemented some or all of the following (see Attachment II for additional details):

- Updated the City's ordinance to clarify that HOT applies to short-term vacation rental properties
- Required short-term vacation rental property owners to register/license properties and pay an annual registration/license fee
- Addressed potential Code Compliance issues
- Updated HOT Administrative Procedures to specifically address short-term vacation rental properties
- Improved website accessibility used to communicate HOT reporting and payment requirements

If you have any questions or need additional information, please contact me at 214-670-3222 or Carol Smith, Assistant City Auditor, at 214-670-4517.

Sincerely,



Craig D. Kinton
City Auditor

Attachments

C: Mary K. Suhm, City Manager
Thomas P. Perkins, Jr., City Attorney
Jeanne Chipperfield, Chief Financial Officer
Edward Scott, City Controller

Short-term Vacation Rentals

Background

The Office of the City Auditor – City of Austin (City of Austin) completed the *Performance Audit of the Hotel Occupancy Tax Collection – Short-Term Vacation Rentals* in February 22, 2011. The report directed the following three recommendations to the City of Austin's City Controller:

- Update its website to make the Hotel Occupancy Tax (HOT) reporting form easier to find and work with major short-term vacation rental marketing companies to provide links to the site
- Coordinate with other departments to be informed of the existence of short-term vacation rental properties
- Update the proposed amended HOT Ordinance to clarify that it applies to short-term vacation rental properties

In addition, the City of Austin began a process to collect short-term vacation rental HOT owed to the City.

In April, the City of Austin notified the City of Dallas' Office of the City Auditor (Office) that the issues identified in the report may also exist in the City of Dallas. After notifying the Dallas City Council, the *Audit of Hotel Occupancy Tax Collection – Short-Term Vacation Rentals* was added to the Fiscal Year 2011 Audit Plan.

Authority to Collect the Hotel Occupancy Tax

State statute and the City of Dallas (City) Code allow the City to collect HOT for short-term vacation rental properties.

The City is authorized to collect HOT by:

- **Texas Tax Code – Chapter 156, Hotel Occupancy Tax, Sec. 156.001.** Definition. In this chapter, "hotel: means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast.

Sec.156.051. Tax Imposed. (a) A tax is imposed on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing \$15 or more each day.

- **Texas Tax Code – Title 3. Local Taxation, Subtitle D. Local Hotel Occupancy Taxes. Chapter 351. Municipal Hotel Occupancy Taxes Subchapters A. Imposition and collection of tax. Sec. 351.002. Tax Authorized. (a) A municipality by ordinance may impose a tax on a person who, under a lease, concession,**

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permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, cost \$2 or more each day, and ordinarily used for sleeping.

- **Dallas City Code – Chapter 44, Taxation**, Article V, Hotel Occupancy Tax. Hotel means any building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast.

Limits on Tax Rate

The HOT tax rate the City can collect is specified by:

- **Texas Tax Code – Chapter 156, Hotel Occupancy Tax**, Sec. 156.052. Rate of Tax. The rate of the tax imposed by this chapter is six percent of the price paid for a room in a hotel.
- **Texas Tax Code – Title 3, Local Taxation**, Sec. 351.003. Tax Rate. (b) The rate in an eligible central municipality may not exceed nine percent of the price paid for a room.
- **Dallas City Code – Chapter 44, Taxation**, Sec. 44-35. Levy; Amount; Disposition of Revenue.
 - (a) There is hereby levied a tax upon the occupant of any room that:
 - (1) Is in a hotel;
 - (2) Is ordinarily used for sleeping; and,
 - (3) The cost of occupancy of which is \$2 or more each day
 - (b) The tax is equal to seven percent of the consideration paid by the occupant of the room to the hotel

Responsibility for Tax Collection

The owner of the hotel is responsible for collecting the HOT as specified by:

- **Texas Tax Code – Chapter 156, Hotel Occupancy Tax**, Sec. 156.053. Collection of Tax. A person owning, operating, managing, or controlling a hotel shall collect for the state the tax that is imposed by this chapter and that is calculated on the amount paid for a room in the hotel.
- **Dallas City Code – Chapter 44, Taxation**, Sec. 44-36. Responsibility for Collection, Reporting, and Payment of Tax. Every person owning, operating,

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managing, or controlling any hotel shall collect the tax for the City and report and pay the tax to the City in accordance with all requirements and procedures set forth in this article.

Reporting Requirements

The owner of the hotel is also responsible for filing periodic reports of HOT amounts collected.

Dallas City Code – Chapter 44, Taxation, Sec. 44-37. Reports; Payment; Fees.

- (a) On the 15th day of the month following each month in which a tax is earned, every person required by this article to collect the tax shall file a report with the director showing:
 - (1) The consideration paid for all occupancies in the preceding month;
 - (2) The amount of the tax collected on the occupancies; and,
 - (3) Any other information the director may reasonably require
- (b) Every person required by this article to collect the tax shall pay the tax due on all occupancies in the preceding month to the director at the time of filing the report required under Subsection (a) of this section
- (c) Every person collecting a tax under this article may deduct a one percent collection fee from the gross amount of tax collected on all occupancies in the preceding month if the tax is paid to and received by the director no later than the 15th day of the month following the month in which the tax is required to be collected. If the 15th day falls on a weekend or holiday, the director must receive the tax by the next business day. If the tax is paid by mail, the date of receipt by the director is the date postmarked by the U. S. Postal Service.
- (d) Each remittance of a tax required by this article must contain the following statement and representation:

The tax remitted and paid to the City of Dallas with this report was collected pursuant to the requirements of Article V, Chapter 44, Dallas City Code, as amended.

Short-term Vacation Rental Requirements for Two Cities

The following are examples of short-term vacation rental requirements for two cities that collect Hotel Occupancy Tax (HOT) for short-term vacation rental properties:

Key West, Florida

The City of Key West, Florida, Ordinance No. 2-06, Sec. 2-7.21. Transient Living Accommodations in Residential Dwellings – Regulation, C. Application, requires that short-term vacation rental property owners must annually provide:

- The complete street address and real estate number of the property
- Proof of ownership, including the name, address, and phone number of each person or entity with an ownership interest in the property
- An approved inspection report of the fire marshal verifying compliance with the fire marshal's criteria for a residential dwelling transient lodging use
- The gross square footage of the property, including the number of rooms, bedrooms, kitchens, and on-site parking spaces attributable to transient lodging use
- A valid and current federal employer tax identification number (or Social Security number) for the owner(s) of the property
- A valid and current sales tax identification number
- The name, address, and 24-hour phone number of the person who will be operating the property's transient accommodations
- The application shall bear the signatures of all owners, authorized agents, and authorized property managers.

Encinitas, California

The City of Encinitas amended Chapter 9.38, Regulating Short-Term Rentals, Ordinance 2006-05 to include the following:

- Defined the term, short-term rental, as the rental of any structure or any portion of any structure for occupancy for dwelling for lodging or sleeping purposes of 30 consecutive days or less) in the City including single family or duplex units.
- Specified short-term rentals must obtain a permit each year for each unit. The application for a permit is accompanied by a non-refundable application fee established by the City Manager to cover the costs of administering the ordinance.

Short-term Vacation Rental Requirements for Two Cities

- Some specified operational requirements, include:
 - Applicants shall use “best efforts” to insure that the occupants and/or guests of the short-term rental unit do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of the Encinitas Municipal Code or any applicable law pertaining to noise, disorderly conduct, overcrowding, the consumption of alcohol, or the use of illegal drugs
 - Property owners shall limit the number of vehicles of overnight occupants to the number designated in the permit which shall not exceed the number of designated on-site parking spaces
 - Trash and refuse shall not be left or stored within public view except from sunset of the day prior to trash pick-up until up to midnight on the day designated for trash pick-up. All trash will be in approved receptacles.
 - Applicants shall affix the short-term rental permit on the inside of the main entry door of each short-term rental unit to which it applies. The interior display will also contain the maximum number of overnight occupants permitted to stay in the unit, the maximum number of vehicles for overnight occupants, and a 24-hour/7-day phone number of the private party responsible for the facility.
 - Applicants shall display on the exterior of a short-term rental unit, a notice provided by the City containing a 24-hour/7-day phone number for a private party responsible for the facility to take complaints regarding its operation. The exterior display will also contain the number of bedrooms, maximum number of overnight occupants permitted to stay in the unit, and the maximum number of vehicles for overnight occupants. The notice shall be in plain view of the general public and/or common areas and shall be maintained in good condition at all times.
 - Applicants are also required to provide adjacent property owners with the 24-hour/7-day phone number for a private party responsible for the facility
- Defined ordinance violations and associated penalties/suspension for noncompliance