

STAFF REPORT*CITY OF OCEANSIDE*

DATE: June 23, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Financial Services Department

SUBJECT: **CONSIDERATION OF AN APPEAL OF THE TRANSIENT OCCUPANCY TAX ASSESSMENT IN THE AMOUNT OF \$6,333 SUBMITTED BY MARINA DEL MAR**

SYNOPSIS

The City Council is requested to consider an appeal of the transient occupancy tax assessment in the amount of \$6,333.00 submitted by Marina Del Mar. Staff is recommending that the City Council deny the appeal.

BACKGROUND

The City of Oceanside contracted with Miller Consulting to perform independent audits. The consultant has performed audits on several City functions, transient occupancy tax (TOT) payments and property lease payments. In January 2009 the consultant began an audit of the lease payments and TOT payments from March 1, 2006, to February 28, 2009, made by Marina Del Mar.

Marina Del Mar, located at 1202 North Pacific Street in Oceanside, is a condominium complex with individual unit ownership. The land is owned by the City of Oceanside which has a property lease agreement with Marina Del Mar Homeowners Association. Many of the individual owners rent their units and the short-term rentals are subject to the TOT tax.

In June 2009, after several extensions were granted by the City, the TOT audit was completed and the consultant prepared a report for the Financial Service Department. In the report the consultant determined that for the audit period, the TOT tax was underpaid by \$6,333 including accrued penalties and interest. The department reviewed the findings and sent a letter, attachment A, to Marina Del Mar requesting \$6,333 be remitted to the City.

Becky Panopoulos, the current President of the Homeowners Association requested additional time to review the findings and search for missing records. Due to the busy summer season, we did not meet again until September 17, 2009. At that time, the findings were reviewed and additional records including a letter, attachment B, objecting

to the findings were provided. In November the audit file was forwarded to the Financial Services Director for review and determination of the amount due to the City.

Pursuant to the Municipal Code, the Financial Services Director acts as the tax administrator for the City. In this role, the Director is responsible for determining the amount of tax due. In January 2010 another letter, attachment C, was sent explaining that the Director had determined the amount of \$6,333 was justified based on all the information received from Marina Del Mar.

The operator requested a hearing with the Financial Service Director, which was conducted on February 2, 2010. At the hearing, the new Homeowners Association President, Jim Pry and Richard Dougherty, CPA and homeowner association member, presented their case for dismissal of the finding that the tax was underpaid.

On February 25, 2010, the Financial Services Director sent a letter, attachment D, stating that upon further review, the amount of the tax due remained at \$6,333. Mr. Dougherty submitted a letter requesting a formal hearing before the City Council. The process for making tax assessments and appealing tax assessments is outlined in the Municipal Code. These processes have been followed with the ultimate authority on the issue being the City Council.

ANALYSIS

There are two issues identified in the audit findings. The first issue is a deduction taken by the operator for checks for room rent totaling \$4,993 that were returned unpaid. This deduction was not allowed pursuant to Oceanside Municipal Code Section 34.14 which states, in part, "rent means the consideration charged, whether or not received...." is subject to the tax. The operator argued the Code is not clear; perhaps there was an oversight by those who drafted the Ordinance. The tax administrator found the language to be clear and the assessment appropriate.

The second issue is regarding exemptions and has two parts. The first part is regarding a long-term rental deduction. The operator submitted returns whereby a long-term stay was deducted twice. On one return the amount was deducted on the line item for long-term stays which is appropriate. On a subsequent return the same amount was deducted from the gross revenue. While the City recognizes the stay as tax exempt, the operator can only deduct the amount one time, not twice. The operator argued that because this was for a long-term rental it was not subject to the tax. The City recognizes the long-term stay but found the second deduction was not allowed.

The second part of the exemption issue centers on the government employee exemptions outlined in Section 34.16 of the Oceanside Municipal Code. The operators frequently and erroneously extended this exemption to military friends and family members or did not document the reason for granting the exemption. Because of the frequency, the auditor, following best practices in accounting auditing standards, reviewed a random sampling of monthly exemptions. He determined that on average only 90% of the exemptions were properly supported. This average was applied to all

claimed exemptions. The operator argued in writing and at the hearing that personnel handling the short-term rentals did not have sufficient knowledge regarding exemptions. The tax administrator did not find that this argument was sufficient to overturn the assessment.

The operator arguments were not found to supersede the requirements of the Municipal Code. These issues resulted in the determination that the TOT tax was underpaid by \$6,333 with penalties and interest.

FISCAL IMPACT

The fiscal impact is dependent upon the City Council findings at the Council hearing. If staff's recommendation is affirmed, the City would be due \$6,333. If the appeal is granted, there would be no fiscal impact. Any payment received would be applied to General Fund account number 1101.4116.

COMMISSION OR COMMITTEE REPORT

Does not apply.

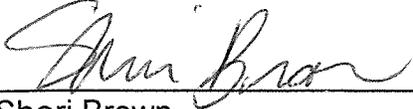
CITY ATTORNEY'S ANALYSIS

The City Council is authorized to hold a public hearing in this matter. Consideration of the matter should be based on the testimony and evidence presented at the hearing. After conducting the public hearing, the Council shall affirm, modify or deny the appeal.

RECOMMENDATION

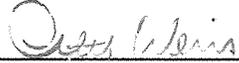
The City council is requested to consider an appeal of the transient occupancy tax assessment in the amount of \$6,333.00 submitted by Marina Del Mar. Staff is recommending that the City Council deny the appeal.

PREPARED BY:



Sheri Brown
Revenue Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Teri Ferro, Financial Services Director





Exhibits:

- A. Notification of audit findings letter and external audit report
- B. Marina Del Mar protest and appeal letter
- C. Tax Administrator determination of tax notification letter
- D. Tax Administrator hearing appeal determination letter
- E. Marina Del Mar request appeal to City Council letter
- F. Authorization to release records



CITY OF OCEANSIDE

Financial Services Department
Revenue Division

June 24, 2009

Marina Del Mar
Attn: Becky Panopoulos, President
1202 N. Pacific Street
Oceanside Ca 92054

RE: Transient Occupancy Tax Audit

Dear Mr. Pettit,

Attached please find the results of the recent Transient Occupancy Tax (TOT) audit. As noted in the report findings, it has been determined that there was an underpayment of the tax in the amount of \$6,333.00 for the period from March 1, 2006 to February 28, 2009.

The audit findings note that exemptions claimed were not always properly documented or reconciled. Additionally, the report notes that in February 2008 gross receipts were erroneously reduced by a bad debt expense. Per Oceanside Municipal Code gross receipts can not be reduced by bad debt. Please remit the underpayment of tax, \$6,333.00, noted in the audit finding to the City of Oceanside, attention Jackie Bickford by December 15, 2008.

Thank you for your cooperation in conducting the audit. Please call me if you have any questions or concerns regarding the report, the findings or the process. My number is (760) 435-3887.

Sincerely,

Sheri Brown
Revenue Manager

cc: Teri Ferro, Financial Service Department
Jim Miller, Auditor
Jackie Bickford, Business License Inspector



Miller Consulting

Mrs. Teri Ferro
Director of Financial Services
City of Oceanside
300 North Days Highway
Oceanside, Ca. 92054

Dear Mrs. Ferro:

Miller Consulting has applied the procedures enumerated below to the accounting records of Marina Del Mar with respect to the transient occupancy tax reported to, and subsequently received by, the City of Oceanside for the period from March 1, 2006 through February 28, 2009. The procedures performed and the results of those procedures are summarized as follows:

1. We obtained and analyzed the City's Municipal Code relating to the levy of transient occupancy tax in order to gain an understanding of the provisions relating to rents, taxes and exemptions. Results: The provisions of the Code were used to perform the procedures below.
2. We reviewed internal controls relating to the preparation of the transient occupancy tax return in order to determine the adequacy of those procedures over the processing and reporting of revenue subject to transient occupancy tax. Results: Internal controls appear to be adequate.
3. We tested amounts reported on the transient occupancy tax returns to accounting records maintained by the taxpayer to determine that payments were based on verifiable revenues, correctly calculated, and remitted on a timely basis. Results: Tested amounts were generally adequately supported, correctly calculated, and correctly paid except as noted on Schedule B.
4. We tested deductions and exemptions claimed by the taxpayer as to whether the exemptions were allowable under City Municipal Code, Article III, Transient Occupancy Tax. Results: The exemptions claimed for the period under review, were not always adequately supported.

Based on additional information supplied by the property, our revised procedures determined that the Marina Del Mar underpaid its transient occupancy tax in the amount of \$6,333 for the period March 1, 2006 through February 28, 2009 (See schedule A for a calculation of amount due from the City). Allowable exemptions and other audit adjustments are outlined on Schedule B.

Oceanside, California
760.435.3864
jmiller@ci.oceanside.ca.us

Mrs. Teri Ferro
Director of Financial Services
City of Oceanside
Page Two

Penalties and interest on the under payment of taxes have been calculated and is detailed on Schedule C.

During the course of our engagement, the following matters came to our attention:

Management does not reconcile government and long term exemptions to transient occupancy tax returns

Marina Del Mar claimed \$523,321 in exempt revenue for the audit period. However, upon further review there was no documentation readily available, including exemption certificates, to support the amounts claimed on their Transient Occupancy Tax returns. The amount claimed on the returns is based on actual transient taxes collected per their computer system without ensuring the legitimacy of the amounts claimed and therefore possibly understating taxable revenues. Management should reconcile the amount of exempt revenue claimed to the actual documentation and the amount actually charged prior to remitting their payment to the City. This practice would ensure that all exempt revenue is properly supported and the appropriate amount is paid to the City.

Exemptions from transient occupancy tax are not properly claimed nor documented

During the course of the audit, we requested that the Marina Del Mar support selected government exemptions claimed on their transient occupancy tax returns by providing the appropriate government exemption forms. Of the 17 items selected for testing only one was considered as allowable. There were 8 exemptions claimed for families of military personnel visiting their loved ones and the remaining 8 had no legitimate supporting documentation whatsoever. The Marina Del Mar should ensure that government exemptions are only granted to those individuals traveling on official government business and that the traveler provide the Marina Del Mar the appropriate government exemption certificate and identification. Only Federal and State of California employees traveling on official business are allowable exemptions under Oceanside Municipal Code.

Incorrect Amount of Gross Rental Receipts Reported

We tested the reporting of gross rental receipts and noted that the property incorrectly calculated the reportable gross rental receipts on one occasion by deducting bad debt expense in the amount of \$4,993 on the February 2008 tax return. Section 34.14 of the Oceanside Municipal Code states, in part:

Rent

"Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel...without any deduction therefrom whatsoever."

Mrs. Teri Ferro
Director of Financial Services
City of Oceanside
Page Three

This engagement was to apply agreed upon procedures only. The sufficiency of the procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures describe above either for the purpose for which this report has been requested for any other purpose. We were not engaged to, and did not; conduct an examination, the objective of which would be the expression of an opinion on the specified items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended sole for the use of City management and the hotels subject to payment of Transient Occupancy Tax to the City and is not intended to be and should not be used by anyone other than these specified parties.

June 11, 2009

MARINIA DEL MAR
 CALCULATION OF AMOUNT DUE TO/FROM CITY
 MARCH 1, 2006 THROUGH FEBRUARY 28, 2009

Period	PER TAX RETURNS				PER AUDIT							Amount Due To/ (From) City
	Gross Receipts	Exemptions Claimed	Taxable Receipts	Audit Adjustments	Gross Receipts	Allowed Exemptions	Taxable Receipts	Tax Payable	Tax Collected	Tax Paid		
March-06	\$ 61,488	\$ 26,045	\$ 35,444	\$ -	\$ 61,488	\$ 21,548	\$ 39,940	\$ 3,994	\$ 3,543	\$ 3,544	\$ 45	
April-06	54,517	20,737	33,780	(11,320)	43,197	18,666	24,530	2,453	3,378	3,378	(92)	
May-06	63,615	6,293	57,322	-	63,615	5,665	57,951	5,795	5,732	5,732	6	
June-06	109,503	15,259	94,244	-	109,503	13,736	95,767	9,577	9,424	9,424	15	
July-06	216,510	23,972	192,538	-	216,510	21,579	194,931	19,493	21,651	19,254	23	
August-06	140,329	14,038	126,291	-	140,329	12,636	127,692	12,769	12,629	12,629	14	
September-06	34,972	11,190	23,782	-	34,972	8,478	26,494	2,649	2,378	2,378	27	
October-06	54,809	6,150	48,659	(1)	54,808	5,536	49,272	4,927	4,866	4,866	6	
November-06	29,385	4,687	24,698	-	29,385	4,219	25,166	2,517	2,470	2,470	4	
December-06	27,778	8,984	18,794	-	27,778	8,087	19,691	1,969	1,879	1,879	9	
January-07	47,386	34,771	12,615	-	47,386	31,299	16,086	1,609	1,261	1,261	34	
February-07	68,363	40,555	27,808	-	68,363	35,848	32,515	3,252	2,781	2,781	47	
March-07	67,514	15,720	51,794	-	67,514	14,150	53,364	5,336	5,179	5,179	15	
April-07	60,263	16,458	43,805	-	60,263	14,815	45,448	4,545	4,381	4,381	16	
May-07	68,257	9,959	58,299	-	68,257	8,964	59,293	5,929	5,830	5,830	9	
June-07	83,741	15,855	67,886	1	83,742	14,272	69,470	6,947	6,789	6,789	15	
July-07	212,918	9,068	203,850	-	212,918	8,163	204,755	20,476	20,385	20,385	9	
August-07	154,596	11,958	142,638	-	154,596	10,764	143,832	14,383	14,264	14,264	12	
September-07	29,949	5,559	24,391	-	29,949	5,004	24,946	2,495	2,440	2,440	5	
October-07	59,214	4,274	54,941	-	59,214	3,847	55,367	5,537	5,495	5,495	4	
November-07	41,715	7,835	33,880	-	41,715	7,052	34,662	3,466	3,388	3,388	7	
December-07	39,814	12,593	27,221	-	39,814	12,587	27,227	2,723	2,723	2,723	(1)	
January-08	48,092	27,259	20,833	-	48,092	24,537	23,555	2,355	2,083	2,083	27	
February-08	51,841	28,521	23,320	4,993	56,834	25,673	31,161	3,116	2,332	2,332	78	
March-08	57,633	13,018	44,615	-	57,633	11,719	45,915	4,591	4,462	4,462	130	
April-08	39,503	6,666	32,837	-	39,503	6,000	33,503	3,350	3,284	3,284	6	
May-08	67,614	7,234	60,380	-	67,614	6,512	61,103	6,110	6,038	6,038	7	
June-08	98,549	16,179	82,370	-	98,549	14,563	83,985	8,399	8,237	8,237	16	
July-08	185,059	24,504	160,555	-	185,059	24,366	160,693	16,069	15,903	16,055	14	
August-08	119,706	20,005	99,701	-	119,706	18,007	101,699	10,170	9,970	9,970	20	
September-08	44,221	2,100	42,121	-	44,221	1,890	42,330	4,233	4,212	4,212	21	
October-08	52,843	2,164	50,679	-	52,843	1,948	50,895	5,090	5,068	5,068	22	
November-08	34,191	4,840	29,350	-	34,191	4,357	29,834	2,983	2,935	2,935	48	
December-08	25,764	5,889	19,875	-	25,764	5,889	19,875	1,988	1,988	1,988	0	
January-09	30,910	19,783	11,127	1	30,911	17,808	13,103	1,310	1,113	1,113	197	
February-09	40,739	23,199	17,540	-	40,739	20,883	19,856	1,986	1,754	1,754	232	
Totals	\$ 2,623,302	\$ 523,321	\$ 2,099,981	\$ (6,327)	\$ 2,616,976	\$ 471,066	\$ 2,145,910	\$ 214,591	\$ 212,244	\$ 210,000	\$ 4,591	

SCHEDULE B

**MARINIA DEL MAR
SUMMARY OF DISALLOWED EXEMPTIONS
MARCH 1, 2006 THROUGH FEBRUARY 28, 2009**

<u>Period</u>	<u>Exemptions Claimed</u>	<u>Allowable Exemptions</u>	<u>Unallowable Exemptions</u>
March-06	\$ 26,045	\$ 21,548	\$ 4,497
April-06	20,737	18,666	2,071
May-06	6,293	5,665	628
June-06	15,259	13,736	1,524
July-06	23,972	21,579	2,394
August-06	14,038	12,636	1,402
September-06	11,190	8,478	2,712
October-06	6,150	5,536	614
November-06	4,687	4,219	468
December-06	8,984	8,087	897
January-07	34,771	31,299	3,472
February-07	40,555	35,848	4,707
March-07	15,720	14,150	1,570
April-07	16,458	14,815	1,643
May-07	9,959	8,964	994
June-07	15,855	14,272	1,583
July-07	9,068	8,163	905
August-07	11,958	10,764	1,194
September-07	5,559	5,004	555
October-07	4,274	3,847	427
November-07	7,835	7,052	782
December-07	12,593	12,587	6
January-08	27,259	24,537	2,722
February-08	28,521	25,673	2,848
March-08	13,018	11,719	1,300
April-08	6,666	6,000	666
May-08	7,234	6,512	722
June-08	16,179	14,563	1,616
July-08	24,504	24,366	138
August-08	20,005	18,007	1,998
September-08	2,100	1,890	210
October-08	2,164	1,948	216
November-08	4,840	4,357	483
December-08	5,889	5,889	-
January-09	19,783	17,808	1,975
February-09	23,199	20,883	2,316
Totals	<u>\$ 523,321</u>	<u>\$ 471,066</u>	<u>\$ 52,255</u>

SCHEDULE C

**MARINIA DEL MAR
CALCULATION OF PENALTIES AND INTEREST - UNDERPAYMENTS (REVISED)
MARCH 1, 2006 THROUGH FEBRUARY 28, 2009**

<u>Period</u>	<u>Tax Payable To City</u>	<u>10% Original Delinquency</u>	<u>10% Continued Delinquency</u>	<u>6% Interest Annually</u>	<u>Total</u>
March-06	\$ 450	45	\$ 49	\$ 85	\$ 630
April-06	(925)	-	-	-	(925)
May-06	63	6	7	11	87
June-06	152	15	17	27	211
July-06	239	24	26	38	328
August-06	140	14	15	22	192
September-06	271	27	30	43	372
October-06	61	6	7	9	83
November-06	47	5	5	7	63
December-06	90	9	10	13	122
January-07	347	35	38	45	465
February-07	471	47	52	61	631
March-07	157	16	17	20	210
April-07	164	16	18	19	218
May-07	99	10	11	11	132
June-07	158	16	17	18	210
July-07	91	9	10	9	119
August-07	120	12	13	12	157
September-07	55	6	6	6	72
October-07	42	4	5	4	54
November-07	78	8	9	7	101
December-07	(0)	(0)	(0)	(0)	(0)
January-08	272	27	30	19	348
February-08	784	78	86	55	1,004
March-08	130	13	14	9	166
April-08	67	7	7	4	84
May-08	72	7	8	4	91
June-08	162	16	18	9	204
July-08	14	1	2	1	18
August-08	200	20	22	8	250
September-08	21	2	2	1	26
October-08	22	2	2	1	27
November-08	48	5	5	1	60
December-08	0	0	0	0	0
January-09	197	20	22	2	241
February-09	232	23	25	2	283
Totals	\$ 4,591	\$ 552	\$ 607	\$ 583	\$ 6,333

DOUGHERTY & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

RICHARD L. DOUGHERTY*
NONI S. PATCHETT*
KENNETH L. MERSCH

*A PROFESSIONAL CORPORATION

345 SOUTH FIGUEROA STREET
SUITE 302
LOS ANGELES, CALIFORNIA 90071

(213) 687-0450
FAX (213) 620-9663
E-MAIL: CPASFORLA@AOL.COM

September 9, 2009

City of Oceanside
Internal Audit Division
300 N. Coast Highway
Oceanside, Calif. 92054

Re: Marina del Mar audit

Gentlemen,

We protest and appeal the findings of internal audit division regarding the occupant tax audit of Marina del Mar and MDM Management Company.

There are two basic issues which we appeal.

First there is the issue of a payment of \$793.00 which was never received. While a check was received, the check did not clear. The tenant had to be evicted. While the owner received a judgement, no collection has ever been made.

The auditor includes the amount as income, citing Section 34.16 of the City ordinance. Sec. 34.16 cites "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 and property and services of any kind or nature without any deduction therefrom whatsoever."

First, Marina del Mar is not a hotel. Marina del Mar is a condominium association in which the owners allow the units to be used during the time they do not wish to occupy them.

The term "consideration charged" is not defined in the statute. The word "charged" can have several meanings. Here the auditor interprets the meaning to include the amount expected to be paid for use of the condominium unit. The statute appears to be directed to interpret the time period for which the tax is assessed. By the statute, at the time of occupancy, the tax is due, if applicable.

The term "whether to be received in money, goods labor or otherwise" only addresses consideration, whether in money or in kind.

The next section "including all receipts, cash credits and property and service of any kind" addresses payment for the use. Where the check received was drawn on insufficient funds, there was no receipt. The tenant had no expectation of payment, and did not intend to pay, as evidenced by a check drawn on an account which did not have sufficient funds to cover the check. There was no agreement between the parties, as the tenant did not and did not intend to pay for occupancy.

For the statute to not allow for a deduction for rents never collected is beyond belief. The Internal Revenue Code Sec. 165, the California Revenue and Taxation Code, Sec 17201, and the State Board of Equalization, Reg 1642, all provide for a deduction for bad debts or amounts not collected. It is well recognized in the world of business, and in city business that not all accounts will be fully satisfied. We believe that this is a scribblers oversight in the drafting of the statute not to include a provision for bad debts, amounts not collected, or amounts not paid.

The other amounts adjusted by the auditor, \$2,100.00 and \$2,099.89 were for rent in unit 206 B. This is a long term rental, with the tenant having occupied the unit in excess of one year. An adjustment was made when checks of the above amounts were drawn on insufficient funds, and the amounts were reversed. The amounts were subsequently paid, but the auditor has included both the original payment and subsequent payment, claiming that there is no adjustment for insufficient funds. Regardless, the funds were for long term rentals, not subject to the tax.

Second, the auditor has made an adjustment for rentals to military personnel, Sec 34.16 where the exemption certificate was not obtained. During the recent military operations, there was an increase in occupancy by military personnel in transit. Under Sec 34.16 (b) these military personnel were exempt from tax. There is no finding by your auditor that the occupancy was not by qualified military personnel under Sec. 34.16 (b), but rather that the "form prescribed by the tax administrator" was not properly obtained. While form is the correct procedure for the casual government employee who seeks occupancy, where these military personnel were involved, we believe that substance should be the established mode.

During this period of time, the owners of the condominiums at Marina del Mar made special concessions of the rent charged to these personnel and reduced the rent to amounts which the military could pay. These were significant concessions by the

owners who felt an obligation to cooperate with the City in welcoming the troops and doing their best to be good citizens. Now, your auditor is attempting to punish these same citizens because a particular form is not completed.

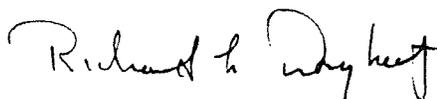
I find fault with the City, when at the time the citizens were pulling together to welcome the troops, the City did not send the auditor to the various rental establishments to explain the form and the procedure so that the tax, while not collected, was not applicable under the City's format. The rental establishments have a significant turnover in personnel. These desk clerks are not tax oriented personnel with sufficient knowledge to know the format and the forms required. To now impose a tax, even though there is no dispute that the occupants were qualified military personnel is to exact a penalty on the very people who were trying to be good citizens.

If we are to assume that the tax is required, then the calculation of the tax is incorrect. If the amount collected, is the total amount to be received, then this amount includes the tax, or represents 110% of the rent. The amount upon which the tax is calculated by the auditor is 110% of the rent, and the deficiency amount must be reduced by the tax included.

We appeal to the governing authority to reconsider the auditor's report and to find the rents not collected are not subject to tax, and to find that substance over form, regarding the military rentals are to be excluded from the tax calculation.

Very truly yours,

DOUGHERTY & COMPANY



Richard L. Dougherty

cc: Jim Pyr, President



CITY OF OCEANSIDE

Financial Services Department
Revenue Division

January 4, 2010

Marina Del Mar
Attn: Becky Panopoulos, President
1202 N Pacific Street
Oceanside Ca 92054

RE: Transient Occupancy Tax Audit

Dear Ms. Panopoulos,

As you may recall in June 2009 I wrote to you informing you of the results of the Transient Occupancy Tax (TOT) audit. The audit found that for the period audited, March 1, 2006 to February 28, 2009 there was an underpayment of the tax in the amount of \$6,333.00. Subsequently we met on September 17, 2009 to further discuss the findings. Recently Teri Ferro, Financial Services Director, and the designated tax administrator, has reviewed your file.

Ms. Ferro in her role as tax administrator has made a determination upholding the audit findings. Thus, the \$6,333.00 has been determined to be an underpayment of the tax.

Pursuant to Section 34.21 of the Oceanside Municipal Code, you have ten days to submit a written application for a hearing on the amount assessed. If a written application for a hearing is not submitted by the operator on or before January 14, 2010, the tax, interest and penalties in the amount of \$6,333.00 shall become final and conclusive and will be immediately due and payable. Any payment should be made to the City of Oceanside, Attn: Jackie Bickford, 300 N Coast Highway, Oceanside, CA, 92054.

Thank you for your cooperation in conducting the audit. Please call me at (760) 435-3887 if you have any questions or concerns.

Sincerely,

Sheri Brown
Revenue Manager

cc: Teri Ferro, Financial Services Director
Jim Miller, Internal Auditor
Jackie Bickford, Business License Inspector



CITY OF OCEANSIDE

Financial Services Department
Revenue Division

February 25, 2010

Marina Del Mar
Attn: Jim Pry, President
1202 N. Pacific Street
Oceanside Ca 92054

RE: Transient Occupancy Tax Audit

Dear Mr. Pry,

On February 2, 2010 I conducted a hearing with both Jim Pry and Richard Dougherty regarding the TOT audit and assessment of \$6,333.00

At the hearing we agreed that any additional information would be provided to the City by February 12, 2010 so I could make a determination by February 18, 2010. On February 22 as I was drafting a letter, I received documentation on a long term stay. Pursuant to the process outlined in Oceanside Municipal Code Section 34.21, I have made a final determination that the assessment remains at \$6,333.00.

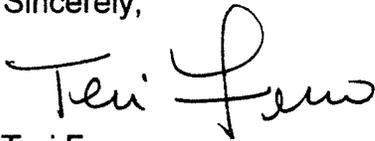
First, the Oceanside Municipal Code Section 34.16 is specific that "rent.....whether or not received...." is subject to the tax. Thus, deductions for checks returned unpaid are not allowed. Second, government exemptions were not properly claimed or documented. Families of military personnel do not qualify for an exemption and records for qualifying stays must be kept and provided for a three year period pursuant to Section 34.23 of the Code. Third, a long term stay was deducted from both the amount of gross receipts reported and as an exemption. This doubled the entry on the TOT returns and are only allowed one time.

During the course of the hearing you acknowledged that the management of rental units during the audit period was not at the "professional" level of the current company providing rental management for your association. Unfortunately my determination is based upon the documents that can or cannot be provided.

Pursuant to section 34.22 of the Oceanside Municipal Code, you have until March 4, 2010 to appeal to the City council by filing a notice of appeal with the City Clerk. If a notice of appeal is not made within the prescribed time, the tax, interest and penalties in the amount of \$6,333.00 shall become final and conclusive and immediately due and payable. Please remit payment to the City of Oceanside, Attn: Jackie Bickford, 300 N Coast Highway, Oceanside, CA 92054.

Thank you for your cooperation in conducting the audit and hearing.

Sincerely,

A handwritten signature in cursive script that reads "Teri Ferro". The signature is written in black ink and is positioned above the printed name and title.

Teri Ferro
Director of Financial Services

cc: Richard Dougherty, CPA
Sheri Brown, Revenue Manager
Jim Miller, Auditor
Jackie Bickford, Business License Inspector

DOUGHERTY & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

RICHARD L. DOUGHERTY*
NONI S. PATCHETT*
KENNETH L. MERSCH

*A PROFESSIONAL CORPORATION

345 SOUTH FIGUEROA STREET
SUITE 302
LOS ANGELES, CALIFORNIA 90071

(213) 687-0450
FAX (213) 620-9663
E-MAIL: CPASFORLA@AOL.COM

March 3, 2010

City Clerk
City of Oceanside
300 North Coast Highway
Oceanside, Calif 92054

RECEIVED

MAR 08 2010

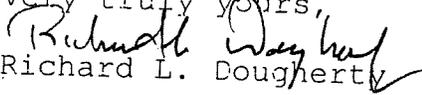
OCEANSIDE CITY CLERK

Re: MDM Management Corporation
City occupancy tax audit

Gentlemen,

We wish to appeal the decision of the Financial Services Department on the audit of the MDM Management Corporation City occupancy tax audit.

We believe that our arguments have merit and should be recognized. For this reason we request a formal hearing on the matter by the City Council.

Very truly yours,

Richard L. Dougherty

cc Jim Pry, President



CITY OF OCEANSIDE

Financial Services Department
Revenue Division

AUTHORIZATION FOR THE RELEASE OF TRANSIENT OCCUPANCY TAX RECORDS

On February 2, 2010, pursuant to Oceanside City Code section 34.21, a hearing was held by the Director of Financial Services Department of the City of Oceanside related to a transient occupancy tax (TOT) audit for Marina Del Mar. Jim ^{Pry} ~~Prey~~, president of MDM Management Company, and Richard Dougherty of Dougherty and Company attended the hearing on behalf of MDM Management Company. By letter dated February 25, 2010, Teri Ferro, Director of Financial Services, determined that an assessment of \$6,333 is owed to the City by Marina Del Mar Home Owners Association.

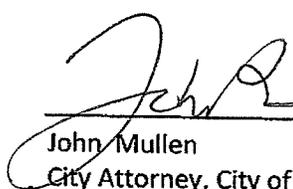
On March 8, the City Clerk received a letter from Richard Dougherty appealing the decision of the Financial Services Director. Pursuant to City Code section 34.22, a hearing will be scheduled when a signed, notarized copy of this release is submitted to the City. In order to consider the merits of the appeal, the City Council must be provided with all documents related to the TOT audit as well as all records produced by Marina Del Mar Home Owners Association. Absent the appeal, these records are kept confidential by the City.

Taxpayer provides its authorization for the City to make all records related to the TOT audit and appeal publicly available at the City Council's meeting where the appeal will be considered. Taxpayer further agrees to release the City, its employees, agents, officers and independent contractors, from any claim that may arise as a result of the disclosure of the TOT records considered during the appeal. Taxpayer shall defend, indemnify and hold the City, its officers and employees, harmless from any claim arising from the disclosure of taxpayer's TOT records.

The undersigned represent and warrant that they have the authority to execute this authorization and release on behalf of taxpayer.



Jim Pry
President, Marina Del Mar HOA
1202 N Pacific Street
Oceanside, Ca 92054



John Mullen
City Attorney, City of Oceanside
300 N Coast Highway
Oceanside, Ca 92054



