

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: January 12, 2016 **Approx. Start Time:** 1:30pm **Approx Length:** 30 min

Presentation Title: Transient Room Tax Review and Recommendations by Merina and Co.

Department: County Finance

Presenters: David Bodway, Marc Gonzales

Other Invitees: Christa Wolfe, Laurel Butman, Danielle Cowan

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

This session is informational for the Commissioners, describing the process and the outcome of a contracted review of Transient Room Tax program compliance and resulting recommendations for improvement of compliance. We are requesting that the Board accept the report and support the addition of a dedicated staff person using existing funds to improve collections.

EXECUTIVE SUMMARY:

The Finance Department procured a review of the Transient Room Tax (TRT) program, with a specific eye to compliance and efficiency of the registration and remittance process and methods to improve all operational aspects. The contractor, Merina and Company delivered a report on a sample of 17 operators selected from among the 233 registered operators. Recommendations in the report include improved outward communication with lodging operators, easier to use forms development, and the expansion of the TRT accounting function to include research on noncompliant lodging businesses.

Funding for the additional FTE will come from full application of the 2% of gross TRT collections which is distributed to the Finance Department. In FY 2015-16, the Tourism and Cultural Affairs Department was budgeted to receive a portion of that funding back to offset operational costs charged to TCA by internal service providers.

The report results and recommendations were presented to the Tourism and Cultural Affairs Department and the Tourism Development Commission (TDC) in November 2015 for their questions; support for the recommendations was strong and there was agreement that the 2% should be fully utilized by Finance to add an accounting and research position to strengthen compliance activities and reporting.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? \$76,653

What is the funding source? TRT 2% Administrative Fee

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals? This item aligns closely with the key goal in Finance's Plan to Improve Knowledge of Financial Performance and Tourism's Marketing goal to serve as the primary destination resource, as measured by overall TRT collections and effective uses of revenues. This items will increase transparency of financial data related to TRT collections while maximizing the ability to collect transient room taxes efficiently, effectively, and completely.

- How does this item align with the County's Performance Clackamas goals? This item aligns with the Board's goal to Build Public Trust through Good Government by increasing transparency, equity in collections, and collection efficiency.

LEGAL/POLICY REQUIREMENTS:

Finance is also working with PGA to petition for changes in Oregon law to allow information exchange with the State from their lodging tax program, strengthening relationships with the Department of Revenue which administers the 1% state lodging tax. Enhancing our focus on increased compliance will require some County Code revisions as well, which County Counsel has integrated into its Code review process.

PUBLIC/GOVERNMENTAL PARTICIPATION:

The TDC endorses the full application of the 2% administrative fee to hire additional staff to administer the tax program.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners and the Budget Committee accept this report and support the addition of a funded staff position to improve collections within the TRT Program.

ATTACHMENTS:

1. Attachment A: *Report of Merina and Co. on Transient room Tax Program*

SUBMITTED BY:

Division Director/Head Approval: DB

Department Director/Head Approval: MG

County Administrator Approval: LSB

For information on this issue or copies of attachments, please contact David Bodway @ (503) 742-5424

**Agreed Upon Procedures: Verifying Compliance with Clackamas
County's Transient Room Tax Code**

For the period of January 1, 2011 through December 31, 2013

EXECUTIVE SUMMARY

Agreed Upon Procedures: Verifying Compliance with Clackamas County's Transient Room Tax Code

Clackamas County imposes a Transient Room Tax (TRT), paid as a 6% surcharge on rents by patrons of lodging providers (hotels, motels, vacations home rentals, camping) which is collected and remitted to the County on a monthly basis by operators of those facilities. Operators are given a uniquely numbered certificate in the name of their business by the County and are expected to remit monthly reports detailing rents.

The following agreed upon procedures were performed on a variety of operators, including hotels, motels, resorts, and vacation rentals for the period of January 1, 2011 through December 31, 2013.

The procedure objectives, scope, and methodology are detailed below:

Procedure Objectives

The objectives of the Agreed Upon Procedures were to:

- Determine what level of noncompliance exists among lodging providers.
- Review records of non-compliant operators and deliver unrealized revenue being denied the County as a result of willful tax evasion, record keeping mistakes, and lack of awareness of tax compliance obligations.
- Provide a foundation to implement positive changes to the TRT program.

Procedure Scope

The scope of the agreed upon procedures included:

- Searching lodging establishments for non-registered operators.
- Selecting a sample of lodging providers and performing the following procedures:
 - Obtain an understanding of internal controls around transient tax reporting and remittance.
 - Verify timeliness of lodging tax return submission.
 - Verify accuracy of filed lodging tax returns with annual income statements and tax returns.
 - Select six (6) months from the reporting period and review monthly summaries to verify accuracy with lodging tax return.

Procedure Methodology

We obtained the list of operators registered during January 2011 through December 2013 from Clackamas County and selected a sample of 17 operators to determine compliance with County Ordinance by performing the following procedures:

Procedure 1: Obtain an understanding of the Operator's accounting policies and procedures for tracking and reporting and record retention practices for the Transient Room Tax.

Procedure 2: Obtain income statements and tax returns, if available, for the years ended December 31, 2011, 2012, and 2013. Reconcile reported revenues to amounts reported on the monthly Transient Room Tax Report.

Procedure 3: Calculate the total tax due from the establishment for each year and reconcile with payments received for that year.

Procedure 4: Select a sample of exempted sales and adjustments reported on monthly Transient Room Tax Report and reconcile to supporting documentation of each exempt sale during that period.

Procedure 5: Select a sample of months from the period January 1, 2011 through December 31, 2013 for detail testing. For each month selected, reconcile the gross rental fees collected per the daily sales logs to the monthly reports.

Procedure 6: For each month selected in procedure 5, trace a sample of the daily sales reported to the records of bank deposits.

Additional procedures included performing internet searches on websites such as VRBO, Airbnb, Vacasa, and Google, to establish if there were operators not registered with the County during 2011 through 2013 that were subject to taxing regulations of Clackamas County.

Summary of Findings

- MCO discovered that 41% of operators tested did not consistently file Transient Room Tax Reports by the due date, resulting in interest and penalties due the County in the amount of \$11,803.95 for the period of January 1, 2011 through December 31, 2013.
- MCO identified that 93% of operators tested filed at least one report during January 1, 2011 through December 31, 2013 inaccurately, resulting in tax due the County in the amount of \$12,344.53 for the period of January 1, 2011 through December 31, 2013.

Operator	(Over) Under Payment Due to Inaccurate Reports	(Over) Under Payment Due to Late Filings	Total (Over) Under by Operator
Lodging Provider 1	\$ 6,223.51	\$ 11,430.98	\$ 17,654.49
Lodging Provider 2	2,735.21	194.84	2,930.05
Lodging Provider 3	1,066.96	-	1,066.96
Lodging Provider 4	-	-	-
Lodging Provider 5	(2.05)	81.46	79.41
Lodging Provider 6	(19.99)	0.99	(19.00)
Lodging Provider 7	(62.72)	-	(62.72)
Lodging Provider 8	25.24	59.50	84.74
Lodging Provider 9	104.84	-	104.84
Lodging Provider 10	381.95	-	381.95
Lodging Provider 11	(573.48)	-	(573.48)
Lodging Provider 12	(601.95)	(7.82)	(609.77)
Lodging Provider 13	1,346.40	-	1,346.40
Lodging Provider 14	NA (1)	-	-
Lodging Provider 15	0.60	-	0.60
Lodging Provider 16	NA (1)	44.00	44.00
Lodging Provider 17	1,720.01	-	1,720.01
Total (Over) Under Reported	\$ 12,344.53	\$ 11,803.95	\$ 24,148.48

(1) These operators did not provide MCO documentation requested due to claim that County does not have legal right to review records according to County Ordinance 8.02.150C

MCO was able to identify 17 operators that are currently providing lodging to patrons, but are not listed as registered operators during January 1, 2011 through December 31, 2013. MCO is unable to verify if these operators were providing lodging services during the scope of our review due to the amount of time that has elapsed since that period.

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**INDEPENDENT ACCOUNTANT'S REPORT
ON APPLYING AGREED UPON PROCEDURES**

Clackamas County
2051 Kaen Road
Oregon City, OR 97045

We have performed the procedures enumerated below, which were agreed to by Clackamas County, Oregon (the County), solely to assist you with respect to verifying compliance of County Tax Code for the period January 1, 2011 through December 31, 2013. The County's management is responsible for the implementation of County ordinance, and the collection of the 6% transient room tax. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and findings are as follows:

Procedure 1: Obtain a list of registered operators covering the period of three years.

Finding 1: MCO obtained a list of lodging providers registered with the County during January 1, 2011 through December 31, 2013.

Procedure 2: Attempt to identify non-registered operators within the County.

Finding 2: MCO was able to identify 17 operators that are currently offering non-exempt lodging services to patrons, but who were not registered with the County during January 1, 2011 through December 31, 2013. MCO cannot verify that these non-registered operators were offering lodging during the period of January 1, 2011 through December 31, 2013.

Procedure 3: Analyze the records obtained from the County to determine which operators have submitted the tax to the Tax Administrator on or before the fifteenth day of the month following each month of collection.

Finding 3: MCO analyzed the transient room tax reports and payment receipts provided by the County. MCO selected a sample of 17 operators and determined that the following seven operators did not consistently file timely lodging returns for the period of January 1, 2011 through December 31, 2013. Those operators include:

- Lodging Provider 1
- Lodging Provider 2
- Lodging Provider 5
- Lodging Provider 6
- Lodging Provider 8
- Lodging Provider 12
- Lodging Provider 16

Procedure 4: Review records of non-compliant operators for enforcement purposes and deliver unrealized revenue divided into four non-compliant operator categories:

- Registered operators who paid the tax imposed after the fifteenth day of the month following each month of collections
- Registered operators who have not paid the tax imposed for some months or never
- Registered operators who have paid the tax imposed but are not collecting and/or remitting the accurate taxes, and
- Operators who have never registered with the County.

Finding 4: MCO selected a sample of 17 lodging operators, from the list of registered operators provided by Clackamas County, and found the cumulative amount of tax owed to the County at December 31, 2013 to be \$24,148.48. This is broken down into the following areas of non-compliant operators:

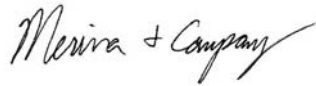
- Tax paid after the 15th of the following month: Of the 17 operators sampled, seven (41%) filed reports after the 15th of the following month. This resulted in \$11,803.95 of interest and penalties due to the County for the period of January 1, 2011 through December 31, 2013.
- Registered operators not paying the tax monthly, or ever: During testing MCO discovered two operators (12%) that did not always pay the tax due on a monthly basis, and two operators (12%) that did not file reports and pay tax for all the periods they were operating. The penalties and interest associated with these late payments have been included above.
- Registered operators not collecting and/or remitting the accurate taxes: MCO found that nearly every operator tested is filling inaccurate lodging tax reports. Of the 17 operators selected for detailed testing, MCO was only able to obtain records for 15 of the lodging providers. Of these 15 operators, 14 (93%) filed transient room tax returns that contained an error. As of December 31, 2013, the County was owed a cumulative total of \$12,344.53 for erroneous reports.
- Operators who have never registered with the County: The results of this procedure are discussed more thoroughly in Finding 2.

Procedure 5: Determine what percentage of operators reported and paid in a timely manner.

Finding 5: Of the 17 operators we performed detail testing on, 10 operators (59%) were filing and remitting the lodging tax to the County in a timely manner.

We were not engaged to, and did not conduct an audit, the objective of which would be the expression of an opinion on the accuracy of transient lodging tax records and quarterly reports. 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 solely for the information and use of the Clackamas County and is not intended to be and should not be used by anyone other than those specified parties.



Merina & Company, LLP
West Linn, Oregon
November 16, 2015

Chapter 1

IDENTIFYING NON-REGISTERED OPERATORS

Methodology

MCO attempted to identify non-registered operators within the County. We performed procedures to:

- Identify the location of operators within the County
- Verify that the operators were not included on the list of registrants provided by the County
- Determine operators are offering occupancy of less than 30 day intervals

Comments

- MCO cannot verify that the 17 operators identified as being unregistered with the County were operating during the period from January 1, 2011 through December 31, 2013.

Findings

- Our search identified 17 operators that were not registered to remit tax to the County, but who appear to be providing non-exempt lodging services to patrons. This reflects only those establishments MCO was able to identify; there may be additional operators that we were unable to detect.

Vacation Rental by Owner

- TLC Cabin
700 N Main Ave, Gresham, OR 97030
- 88019 E Creek Ridge Road (#012)
Government Camp, OR 97028
- 88009 E Creek Ridge Road (#013)
Government Camp, OR 97028
- 88096 E Alpenglow Lane (#046)
Government Camp, OR 97028
- 88086 E Alpenglow Lane (#047)
Government Camp, OR 97028
- 87957 E Alpenglow Lane (#064)
Government Camp, OR 97028
- 30665 E Camryn Way (#077)
Government Camp, OR 97028
- 30553 E Skibowl Way (#127)
Government Camp, OR 97028
- 30604 E Skibowl Way (#134)
Government Camp, OR 97028
- 30614 E Skibowl Way (#135)
Government Camp, OR 97028
- 30634 E Skibowl Way (#136)
Government Camp, OR 97028
- 88130 E Outback Way (#150)
Government Camp, OR 97028

Campground

- Squaw Mountain Ranch
PO Box 2009, Estacada, OR 97023

Airbnb

- Charming Cottage
- Salmon River Chalet
- Mt Hood Forest Sanctuary Studio
- Sandy River Home

Recommendations

- We recommend the County review the table of non-registered operators and notify them of their duty to register and remit Transient Room Tax.
- We recommend that the County send fliers to the condos at Collins Lake Resort notifying owners of the County Transient Room Tax requirements. Collins Lake Resort is a collection of individually owned condominiums being operated by a variety of management companies, and some that are owner occupied. Due to this, it is not easily determined if the individual condos are being used for vacation rentals, or for the owner's benefit. MCO feels that a flier to all units would be an effective way of notifying condos not collecting and submitting the transient tax of the necessary requirements.
- We recommend that the County continue efforts to have the State of Oregon Department of Revenue release information about the operators reporting and paying the state transient room taxes.
- We recommend the County contact booking agents (i.e. Airbnb, FlipKey, etc.) to register.

Chapter 2

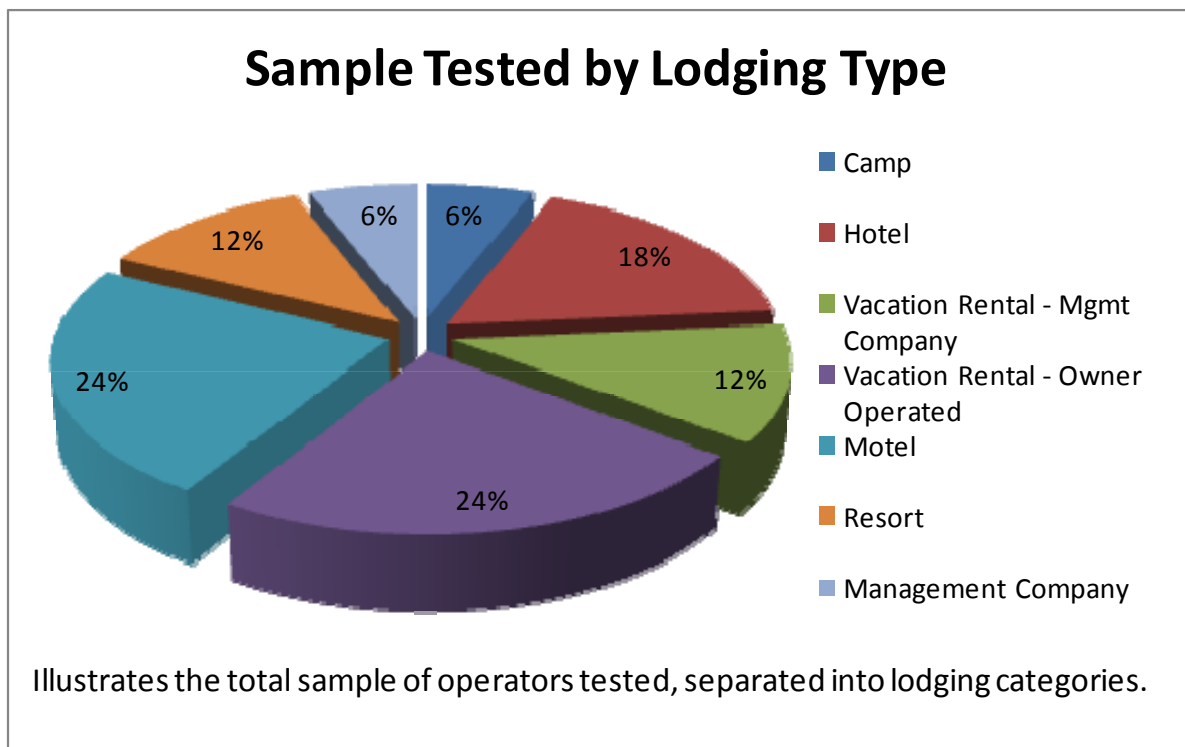
NON-COMPLIANT OPERATORS

Methodology

MCO selected 17 operators from the list of lodging providers registered with Clackamas County during the period January 1, 2011 through December 31, 2013. With respect to the sample selected, we performed procedures to:

- Verify timeliness of transient lodging returns and tax submission
- Determine compliance with record retention requirements according to County ordinance
- Determine accuracy of transient lodging returns and tax remittance

Additional procedures included inquiring of operator's personnel in order to obtain an understanding of internal control policies surrounding the collection, reporting, and remittance of transient lodging tax.



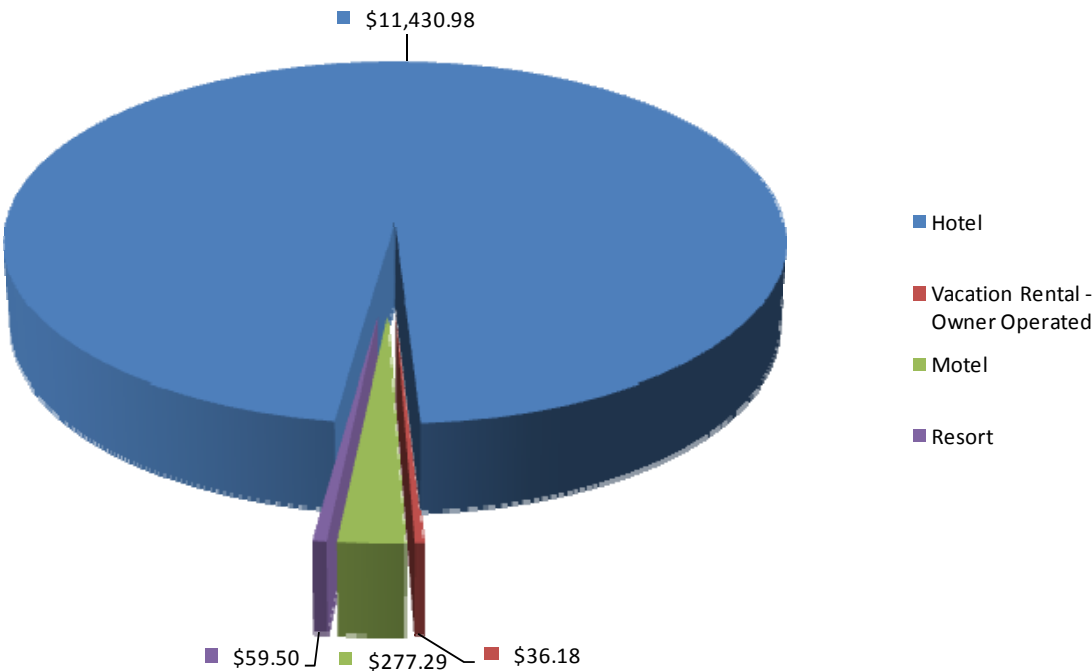
Findings

- Of the 17 operators tested, seven, or 41%, did not file transient lodging reports by the deadline, as outlined in the County Ordinance. These operators cumulatively owed the County \$11,803.95 in penalties and interest as of December 31, 2013.

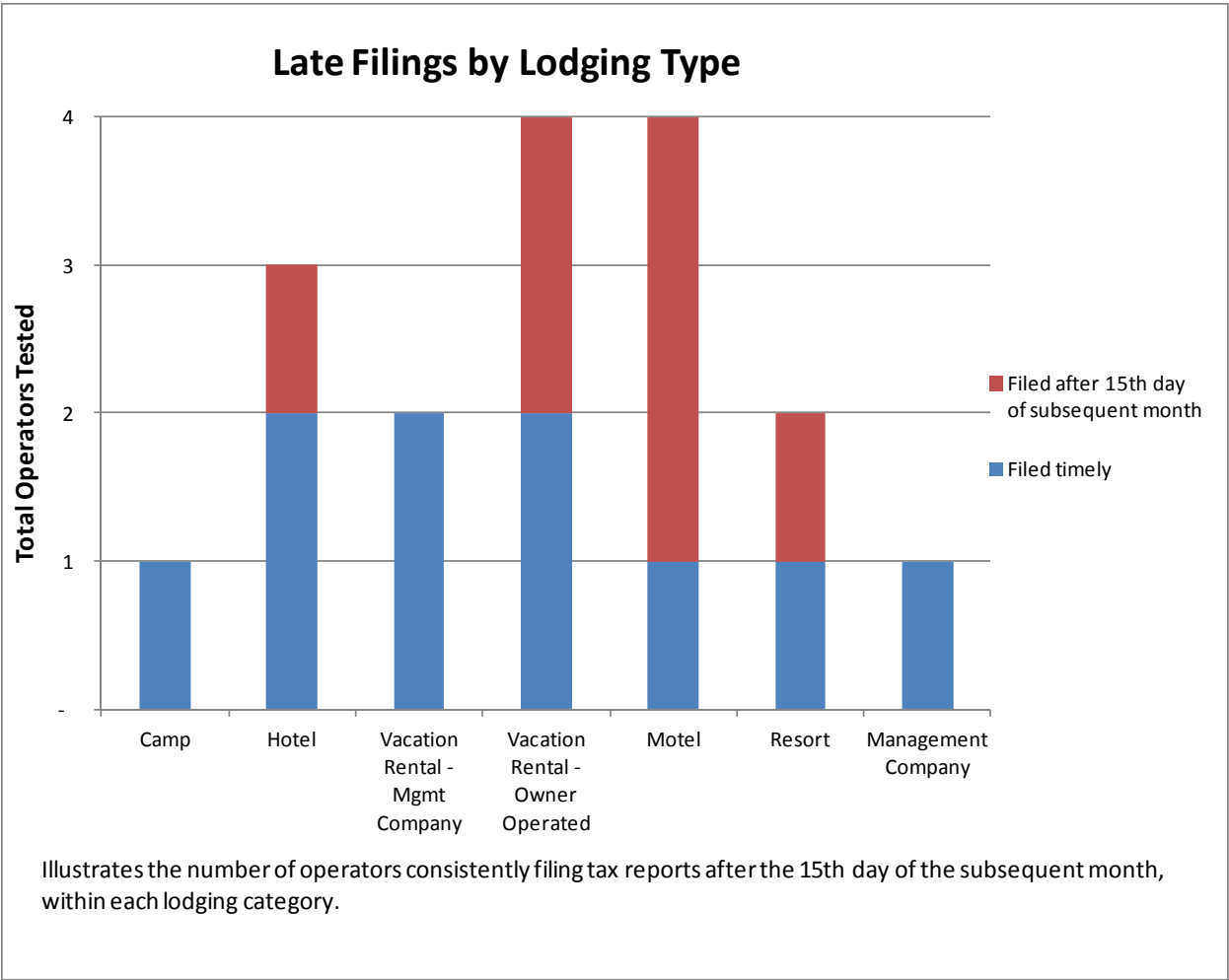
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Lodging Provider 12	(7.82)
Lodging Provider 16	44.00
Total Under Payment Due to Late Filings	\$ 11,803.95

Under Payments Due to Late Filings- By Lodging Type



- Of the reports filed late, MCO was able to determine that Motels had the highest percentage of late filed reports, with 75% of the operators in that category not filing reports by the 15th day of the following month.

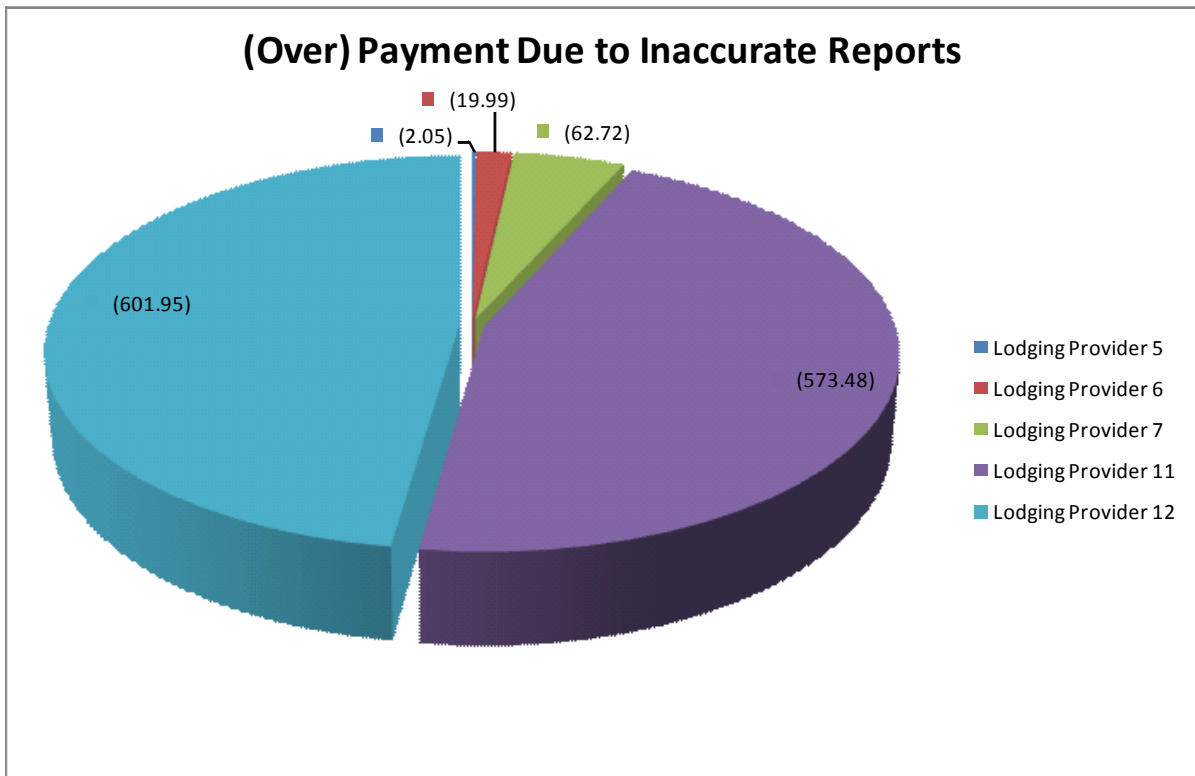


- MCO was able to verify that 88% of the operators tested appropriately retained their business records for three years and six months, as required per County Ordinance. For the remaining 12%, records were not remitted to MCO as the operators felt the County had no legal reason to request them according to County Ordinance section 8.02.150 (C). which states that:

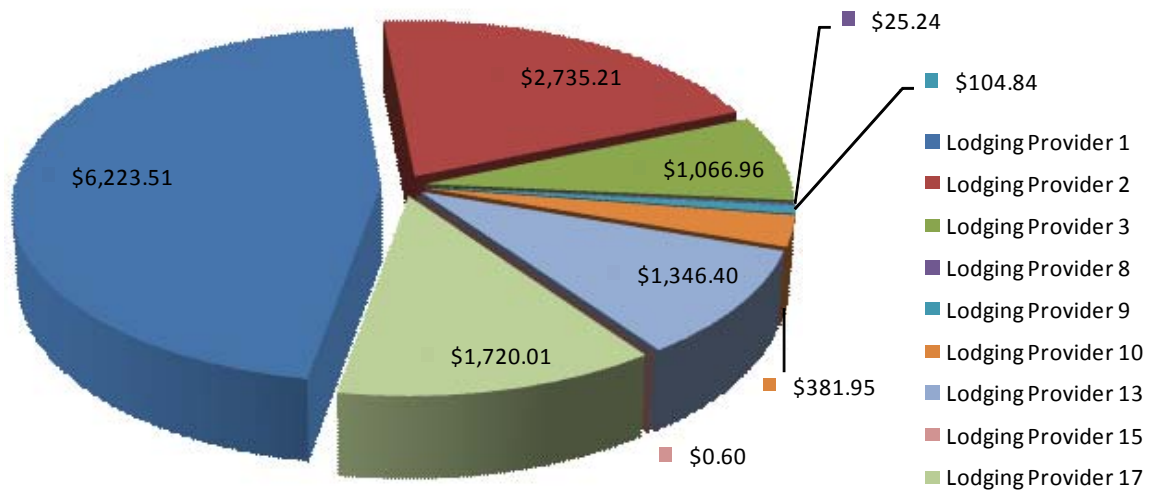
“If the Tax Administrator has reason to believe that the returns are incorrect, or that fraud, refusal to remit, evasion or operator delay has occurred, then the Tax Administrator or any person authorized in writing by him or her may examine during the course of normal business hours the books, papers, and accounting records relating to room sales...”

- MCO discovered inaccuracies in the transient lodging reports and payments submitted by 14 of the 15 operators for which detailed testing occurred. For the period January 1, 2011 through December 31, 2013, the 14 operators cumulatively owed the County \$12,344.53.

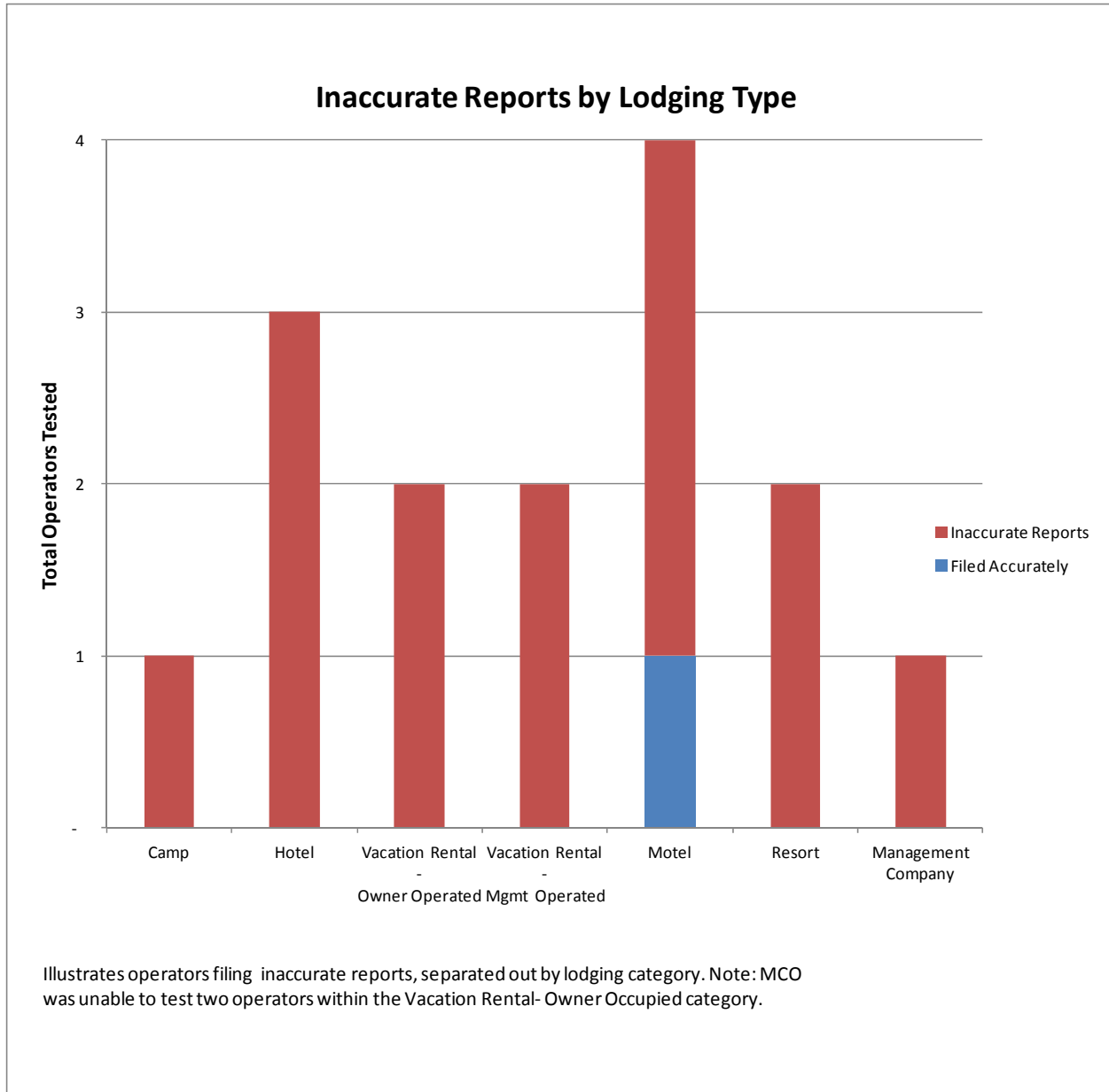
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Lodging Provider 13	1,346.40
Lodging Provider 15	0.60
Lodging Provider 17	1,720.01
Total Under Payment	\$ 12,344.53



Under Payment Due to Inaccurate Reports



- As only one operator tested filed timely and accurate reports, it appears that the likelihood of inaccuracies is spread consistently among lodging types.



Recommendations

- MCO recommends that the County do monthly spot audits to ensure compliance with the County Ordinance on a more consistent basis. Spot audits might entail selecting a handful of operators each month and requesting supporting documentation to agree to that tax report.
- It was noted during testing that a significant portion of the discrepancies were attributable to mathematical errors. We believe that supplying each operator an electronic report template with built-in formulas would help reduce errors due to miscalculations.

- In efforts to increase timeliness of reporting, MCO recommends that the County provide an online reporting application that would allow operators to fill out and submit transient tax reports online. This fillable form should automatically calculate the tax, which would eliminate common mathematical errors.
- We recommend that the County update the County Ordinance to clarify responsibilities and deadlines. Some suggestions include:
 - Eliminating County Ordinance section 8.02.150 (C), we would recommend adding some wording similar to that below instead:

The audit by the Tax Administrator or person authorized by the Tax Administrator need not be based on reasonable cause to believe the operator's returns are incorrect, but may be conducted as a periodic check to ascertain and determine the amount required to be paid, or to verify the accuracy of any return.

- Require online travel companies (i.e. Expedia, Travelocity, ect.) and booking agents (i.e. Airbnb, FlipKey, etc.) to remit a reconciliation for the operators for which they have collected transient room taxes.
- One of the significant issues we ran into was operators not being responsive in a timely manner. We would recommend adding clarifying wording that if there is an audit or examination of records that the operator has a specified number of business days after notification to respond. For example:

The Tax Administrator or person authorized by the Tax Administrator may from time-to-time, conduct periodic audits of any person required to file a return or pay a transient occupancy tax, and may, at a mutually agreed upon time with the operator, but no later than ten (10) business days after notification, examine the books, papers and accounting records of any hotel operator during normal business hours.