City of Culver City, California

City Council Agenda Item Report

Meeting Date:11/28/05	Item Number: _A-2_____
AGENDA ITEM: Appeal By LAX Plaza Hotel From The Tax Administrator's Transient Occupancy Tax Determination of November 10, 2005.	
Contact Person/Dept.: Nagam Rao/City Treasurer's Office	Phone Number: (310) 253-5889
Fiscal Impact: Yes [x] No []	General Fund: Yes [x] No []
Public Hearing: [] Action Item: [x]	Attachments: [X]
Public Notification: LAX Plaza Hotel on 11/23/05; Master Notification List on 11/23/05	
Department Approval: Crystal Alexander	CAO Approval: Martin Cole for Jerry Fulwood 11/22/05
City Controller Approval: N/A	

RECOMMENDATION:

That the City Council deny LAX Plaza Hotel's appeal of the Tax Administrator's decision of November 10, 2005 fixing the Transient Occupancy Tax (including related penalties and interest) owed by the hotel; and

That the City Council find that LAX Plaza Hotel owes the City $469,983.25 for Transient Occupancy Tax (including related penalties and interest).

PROCEDURE:

1. Mayor calls for a brief staff report and receives and files all reports and notices.
2. Mayor invites Appellant LAX Plaza Hotel to address the City Council.
3. Mayor invites Respondent City Treasurer/Tax Administrator to address the City Council.
4. City Council discusses the matter and arrives at its decision.

BACKGROUND:

The Culver City Municipal Code (CCMC) imposes a Transient Occupancy Tax (TOT) on hotel occupancy. Government employees on official business, officers and employees of foreign governments, guests who have stayed longer than 30 days and those guests presenting a written agreement providing for a period of occupancy greater than 30 days are exempt from the TOT. The CCMC requires that any exemptions be claimed under penalty of perjury, on a form prescribed by the City, at the time that any occupancy fee is collected. Under the CCMC, hotel operators collect the TOT on behalf of the city. These taxes are to be held in trust by the hotels until they are remitted to the City. At the end of every month[1], each hotel operator is obligated to file a tax return and remit, to the Tax Administrator, all TOT collected on the City's behalf during the prior month.

A. TOT Enforcement/Collection Procedures

The CCMC provides an assessment procedure designed to help the City establish the TOT due from hotels failing to comply with their obligation to file TOT returns and remit the TOT collected on behalf of the City. Under this assessment procedure, the Tax Administrator is authorized to estimate the amount of TOT (along with the attendant interest and penalties) due from hotels which have failed to file TOT returns. Once the Tax Administrator makes such an estimate, the Tax Administrator must notify the involved hotel about the amount assessed and about the hotel's right to request a hearing, before the Tax Administrator, regarding the amount of the assessment.

If the assessed hotel fails to request a hearing within ten days of service of the notice of assessment, the assessed amount becomes final and immediately due and payable. However, if the assessed hotel requests a hearing, the Tax Administrator must set the matter for a hearing, at which hearing the hotel operator can show why the assessed amount should not be fixed as the TOT owed by the hotel. After this hearing, the Tax Administrator determines the amount of TOT (including interest and penalties) due and notifies the hotel of that amount. This amount becomes due and payable fifteen days after the Tax Administrator makes his/her determination, unless the hotel appeals to the City Council.

Upon the filing of such an appeal, the City Council must set the appeal for a hearing. After such hearing, the findings of the City Council become final and conclusive and any amount found by the City Council to be due becomes payable upon service of notice of the City Council's findings. Should a hotel fail to pay the assessed amount after exhaustion of these assessment procedures, the City can file a lawsuit to enforce the City Council's findings and collect the assessed TOT.

B. Factual Summary

As of early October, 2005, the Ramada Hotel (the prior name of LAX Plaza Hotel) and LAX Plaza Hotel had failed to file tax returns and to remit the TOT collected for thirteen of the months occurring between October, 2003 and August, 2005.

The City Treasurer's Office wrote to the hotel about these delinquencies on each of the following dates:

[1] Monthly reporting and remitting are per a July 2001 Tax Administrator's ruling and applies to all hotels/motels.

December 8, 2003
February 16, 2004
March 4, 2004
December 3, 2004
March 3, 2005
April 13, 2005
June 17, 2005

The City Attorney's Office sent the hotel a related demand letter on August 24, 2005.

At around this time, City staff also received information that the LAX Plaza Hotel was about to be sold. Since the hotel had not responded to any of the letters from either the City Attorney's or the City Treasurer's offices and since there was now a risk that the business would be dissolving and/or leaving town, City staff began formulating enforcement and collection strategies during August and September, 2005.

The primary enforcement and collection strategy formulated by City staff involved use of the TOT assessment procedures. TOT returns and remittances are due on the last day of the month subsequent to its collection. So, as of October 12, 2005, the hotel was delinquent on TOT returns and remittances through August, 2005. Therefore, to commence the TOT assessment procedures, on October 12, 2005, the City Treasurer, in her role as the Tax Administrator, notified LAX Plaza Hotel that based on an estimate of their room revenues, she had arrived at an assessment of $639,388 as the TOT (including interest and penalties) owed by the hotel for the thirteen months (i.e. through August, 2005) for which the hotel had failed to file TOT returns and remit TOT payments. (Attachment 1; also, Exh. 8 at the hearing of November 8, 2005.) The Tax Administrator did not include TOT owed for September, 2005 in this notification because the September TOT returns were not due until October 31, 2005. At the same time, the Tax Administrator notified the hotel operators of their right to request a hearing at which the hotel could challenge the assessed amount.

On October 24, 2005, LAX Plaza Hotel submitted a letter asserting that the TOT (including interest and penalties) owed by the hotel for the involved thirteen months, as well as September, 2005, was actually $424,030.14. Since there was a significant discrepancy between what the Tax Administrator estimated was owed by the hotel and what the hotel estimated was owed, the Tax Administrator informed the hotel operators of their right to a hearing on this issue and set that hearing for November 8, 2005. (Attachment 2; also, Exh. 14 at the hearing of November 8, 2005.) At the same time, the Tax Administrator informed the hotel that, in preparation for the hearing on November 8, her staff would be exercising its right to audit the hotel's TOT records. Treasury Division Manager Nagam Rao and an audit manager from the City's outside audit firm visited LAX Plaza Hotel on November 3, 2005 and were able to audit the hotel's TOT records.

At the hearing of November 8, 2005 ("show-cause hearing"), the hotel and City representative agreed on the amount of gross revenues collected by the hotel during the delinquent thirteen months occurring between October, 2003 and August 2005. The hotel and City representatives also expanded their discussions to cover the month of September 2005, as the hotel's representatives had included this month in their letter requesting the show-cause hearing and as the TOT returns and remittances for September, 2005 had become delinquent as of November 1, 2005.

The only unresolved issue at the show-cause hearing was the amount of exemptions the hotel was entitled to claim for the months under review. At the show-cause hearing, hotel representatives asserted that $338,443.12 of the revenues generated during the fourteen months (through September, 2005) were exempt from TOT. However, the hotel representatives did not present any documentation to substantiate these exemptions at the hearing. Further, even during the audit conducted by the City's Treasury Division Manager and outside auditor on November 3, 2005, the hotel representatives had been unable to produce adequate documentation to support the hotel's claim that revenues of $338,443.12 be exempted from the TOT calculations.

At the show-cause hearing, the Tax Administrator requested that the hotel file the missing TOT returns. The hotel's representatives agreed to do so.

On November 10, 2005, the Tax Administrator issued findings based on the evidence presented and stipulations made at the show-cause hearing. (Attachment 3.) These findings related to fourteen months of delinquencies (i.e. delinquencies through September, 2005) because the parties had stipulated, during the show-cause hearing, to the amount of gross revenues involved for these fourteen months. In her findings, the Tax Administrator disallowed the $338,443.12 exemption asserted by the hotel for this fourteen-month period because the hotel had failed to submit adequate documentation to support the $338,443.12 exemption. Therefore, the Tax Administrator's findings fixed the TOT (including penalties and interest) owed by the hotel for the involved fourteen months at $506,095.16. Had the hotel submitted the documentation required to substantiate its asserted $338,443.12 exemption, the TOT (including penalties and interest) would have been fixed at $456,648.34, a difference of $49,446.82.

On November 10, 2005, the hotel filed TOT returns for the thirteen delinquent months occurring between October, 2003 and August 2005. To date, the hotel has not filed its TOT return for the month of September 2005, nor have they submitted any reason as to why they have not done so. The gross revenues reported on these thirteen TOT returns were the same as the gross revenues which had been agreed to during the show-cause hearing for these same thirteen months. However, notwithstanding that the hotel had still not produced any documentation to substantiate any of its asserted exemptions, these TOT returns asserted $253,717.12[2] in exemptions for the involved thirteen months.

Obviously, the exemption amount as well as the TOT (including penalties and interest) due will vary depending on whether one is addressing a thirteen-month or a fourteen-month period and depending on whether one assumes that all of the asserted exemptions are allowed or disallowed. The table, below, attempts to summarize all of these variables in table format:

TABLE

	Status as of October 12, 2005 (at time of mailing of Notice of Transient Occupancy Tax Assessment)	Status as of November 8, 2005 (at time of the Show-Cause Hearing)
Number of Months Delinquent	13	14
Amount claimed as exemptions by the hotel	$253,717.12	$338,443.12
TOT due per City Staff (if all exemptions are disallowed) (Tax+penalties+interest)	$469,983.25	$506,095.16
TOT due per Hotel (if all exemptions are allowed) (Tax+penalties+interest)	$431,720.27	$456,648.34

DISCUSSION:

Since under the CCMC any hotel aggrieved by the Tax Administrator's decision after a show-cause hearing can appeal such decision to the City Council and since the hotel continued to assert a position contrary to the Tax Administrator's show-cause decision, City staff have construed the hotel's continued insistence on asserting the unsubstantiated $253,717.12 exemption as an appeal of the Tax Administrator's show-cause findings.

[2] $253,717.12 is the asserted exemption amount for the involved thirteen months (i.e. for the thirteen months which were the subject of the Tax Administrator's Notice of Assessment of October 12, 2005). $338,443.12 is the amount asserted by the hotel as exempt for the involved thirteen months plus September, 2005. These were the fourteen months which were discussed at the show-cause hearing.

City staff grappled with determining whether this appeal should relate to the fourteen-month period which both parties discussed and stipulated to (at least regarding the amount of gross revenues during this fourteen month period) at the show-cause hearing or whether this appeal should relate only to the thirteen-month period which was the subject of the Notice of Transient Occupancy issued on October 12, 2005. As noted previously, the Tax Administrator's Notice of Transient Occupancy Tax Assessment only related to the thirteen months through August, 2005, since the September, 2005 TOT return had not become due at the time the Notice of Transient Occupancy Tax Assessment was issued. Upon advice of counsel, staff have determined not to include the September, 2005 TOT and asserted exemption within the scope of this appeal because doing so could subject the City to a claim that the City violated the hotel's due process rights by not having provided the hotel with a noticed opportunity to be heard regarding the September, 2005 TOT. Accordingly, City staff have decided to limit the scope of this appeal to the Tax Administrator's decision disallowing the $253,717.12 asserted exemption and fixing the TOT (including penalties and interest) owed by the hotel for the thirteen-month period (through August, 2005) at $469,983.25[3].

It is important to note that the only issue involved in this appeal is whether to uphold the Tax Administrator's decision to disallow $253,717.12 in exemptions claimed by LAX Plaza Hotel during the involved thirteen months. If the City Council upholds that decision, the City Council should also uphold the Tax Administrator's decision fixing the TOT (including penalties and interest) owed by the hotel at $469,983.25. If the City Council overturns the Tax Administrator's decision to disallow $253,717.12 in exemptions, the City Council should also find that the Tax Administrator should have fixed the TOT (including penalties and interest) owed by the hotel at $431,720.27.

It should be noted that any hotel which has paid the TOT has the right to amend its TOT returns and claim a refund for any excess tax paid within 3 years from the time the TOT was initially paid, subject to the hotel specifying the grounds upon which the refund claim is founded. In view of this, the appellants would be eligible to claim a refund for whatever exemptions they may wish to subsequently claim, provided they are able to furnish the supporting documentation and file their amended return(s) within the 3 year time limit.

FISCAL ANALYSIS:

If the City Council upholds the decision/findings of the Tax Administrator, $469,983.25 will be payable to Culver City upon service of notice of the City Council's decision. If the

[3] The Tax Administrator's findings, issued November 10, 2005, actually fixed the TOT (including interest and penalties) at $506,095.16. This is the TOT (including interest and penalties) for the involved 13 months plus September, 2005 with all asserted exemptions being disallowed. $469,983.25 is the TOT (including interest and penalties) for the involved 13 months, exclusive of September 2005, with all asserted exemptions being disallowed.

City Council reverses the decision/findings of the Tax Administrator, $431,720.27 will be payable to Culver City upon service of notice of the City Council's decision.

ATTACHMENTS:

1. Notice of Transient Occupancy Tax Assessment
2. Notice of Hearing regarding Transient Occupancy Tax Assessment
3. Notice of Fixing of Transient Occupancy Tax Assessment

MOTION:

That the City Council:

A.

1. Deny LAX Plaza Hotel's appeal of the Tax Administrator's decision of November 10, 2005 fixing the Transient Occupancy Tax (including related penalties and interest) owed by the hotel;

AND

2. Find that LAX Plaza Hotel owes $469,983.25 as Transient Occupancy Tax (including related penalties and interest).

OR

B.

1. Grant LAX Plaza Hotel's appeal of the Tax Administrator's decision of November 10, 2005 fixing the Transient Occupancy Tax (including related penalties and interest) owed by the hotel;

AND

2. Find that LAX Plaza Hotel owes $431,720.27 as Transient Occupancy Tax (including related penalties and interest).