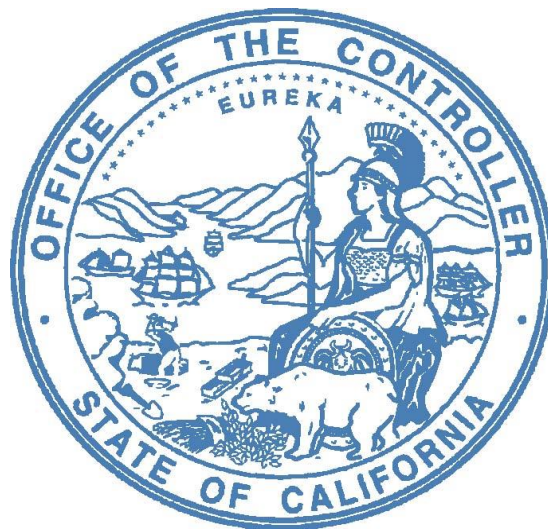


State of California County Tax Collectors' Reference Manual

Chapter 13000: Transient Occupancy Tax



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Chapter 13000 Transient Occupancy Tax

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* All statutory references cited are from Revenue and Taxation Code, unless otherwise noted.

13000-13003 General Information: Provision and Requirements

13000. AUTHORITY TO COLLECT

The authority to [levy](#) TOT is granted to the legislative bodies of both cities and counties by [Revenue and Taxation Code section 7280](#). This manual section refers to only county TOT levy and collection. The authority to collect TOT is generally granted to the county tax collector by the board of supervisors (board) by means of an [ordinance](#). An ordinance passed by a board is specific to that county. Although similar, each county ordinance may differ from others throughout the state.

13001. COLLECTION JURISDICTION

Counties may levy TOT only in the [unincorporated areas](#) of the county.

13002. REVENUE AND TAXATION CODE VS. ORDINANCE

While the Revenue and Taxation Code broadly defines the basic levy and exemption of TOT, it leaves many of the specifics of the levy, exemptions, administration, reporting, remitting, penalties, audits, appeals, refunds and collection to be defined by [ordinance](#).

13003. TAX CLEARANCE CERTIFICATE

A purchaser, transferee, or other person attempting to obtain ownership of property subject to transient occupancy tax may request the county to issue a tax clearance certificate ([Rev. & Tax. Code §7283.5](#)).

Within 90 days of receiving the request, the county must either issue a tax clearance certificate or audit the records of the current owner for any occupancy taxes that may be due and owing.

An audit must be conducted within 90 days after the records are made available. A tax clearance certificate must be issued within 30 days of completing the audit.

The tax clearance certificate must state the following:

- 1) The amount of tax due and owing for the subject property, if any;
- 2) The time period for which it is valid.

The purchaser, transferee, or other person or entity obtaining ownership may rely upon the tax clearance certificate as conclusive evidence of the tax liability as of the date specified on the certificate.

Any purchaser, transferee, or other person or entity who obtains ownership without obtaining a tax clearance certificate, or obtains a tax clearance certificate that shows a tax liability and fails to withhold sufficient funds in the escrow account, shall be held liable for the amount of the tax due ([Rev. & Tax. Code §7283.5](#)).

See form [SCO 13-1](#) for a sample Tax Clearance Certificate.

NOTE: Pursuant to Stat. 7283.5, Ch. 936, effective January 1, 2005, this section does not apply to charter counties.

13100-13103 Statutory Levy Requirements: General Information

13100. LEVY OF TOT

TOT is levied for the privilege of occupying a room, rooms, or other living space in a hotel, inn, tourist home or house, motel, or other lodging for a period of 30 days or less ([Rev. & Tax. Code §7280](#)).

13101. EXEMPTIONS PURSUANT TO REVENUE AND TAXATION CODE SECTION 7280

The following individuals are exempt from TOT:

- 1) The owner of a timeshare estate occupying a room or rooms in a timeshare project (timeshare estate is defined in [Business and Professions Code section 11003.5](#);
- 2) The owner of a membership camping contract in a campsite at a campground (membership camping contract is defined in [Civil Code section 1812.300](#));
- 3) The owner of other real property in which the owner retains that interest (see [M-13311](#) - Warner Springs Resort);
- 4) A guest who either:
 - a. Occupies a timeshare or campsite accompanied by the owner; or
 - b. Exercises the owner's right of occupancy without payment of compensation to the owner; and,
- 5) The following persons if the board of supervisors elects to exempt them if their occupancy is in the course of official business of their employer and has created a standard form to claim this exemption:
 - a. An employee or officer of a foreign government;
 - b. An employee or officer of the United State Government; or,
 - c. An employee or officer of the State or a political subdivision of the State.

NOTE: The standard form must contain a requirement that the person claiming the exemption must show either a travel order from his or her employer, a government warrant issued to pay for the occupancy, or a government credit card that will be sued to pay for the occupancy.

COMMENT: This does not apply to charter counties.

13102. DEFINITION OF OTHER LODGING

"Other Lodging" includes but is not limited to:

- 1) A campsite, and
- 2) Space at a campground or recreational vehicle park.

"Other Lodging" does not include (exempt):

- 1) Any facilities operated by a local government entity,
- 2) Any campsite in a unit of a state park's system; and,
- 3) Any lodging defined in [M-13101](#) ([Rev. & Tax. Code §7280](#)).

13103. TIMESHARE PROJECTS

Timeshare projects in existence and subject to TOT prior to May 1, 1985, by an ordinance enacted also prior to May 1, 1985, are not exempt from levy and collection. Any litigation pending on or prior to December 31, 1985, is not affected ([Rev. & Tax. Code §7280](#)).

13200-13208 Ordinance Enactment Considerations: General Information

13200. BACKGROUND

Each county board enacts an [ordinance](#) to set the requirements for reporting, remitting, rates, appeals, refunds, and collections. Most ordinances also include definitions to better define levy and exemptions in state law. The following sections are not required; they are only suggestions and information. However, the elements outlined in these sections are usually addressed in most ordinances.

13201. DEFINITIONS

The definitions outlined in [M-13202 - M-13208](#) may be useful in an ordinance to clarify whether a party is liable for TOT. The broadest definitions should be used so as not to exclude a business subject to the tax.

13202. PERSON

Any person who rents lodging for a period of 30 days or less is subject to TOT. "Person" includes any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any grouping acting as a unit, with the exception of the United States of America, the State of California, and any political subdivision of either upon which the city, county, or city and county is without power to impose TOT. Thus, a person is exempt from TOT if the lodging is required in the course of official business on behalf of the state or the federal government or any of its political subdivisions.

Whenever the term "person" is used in any clause in this ordinance imposing either a tax, liability, or a penalty for failure to perform any act mandated by this ordinance, such term shall include any natural person who as an individual or with a spouse owns 50 percent or more of the capital stock of a corporation obligated to file returns and pay tax as an "operator" pursuant to this ordinance and, in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations under the provisions of this ordinance.

A "person" as defined herein, who is also an officer of a corporation obligated to file returns and pay tax as an "operator" pursuant to this ordinance, shall be presumed to be a person with the power to control said corporate operator's fiscal decision-making processes.

13203. HOTEL

A hotel is any structure or portion of a structure that is occupied by, or intended or designed for occupancy by, transients for dwelling, lodging, or sleeping purposes. It includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

NOTE: The above definition was successfully defended by a county counsel at a board hearing to determine liability for tax. A business claimed it was not subject to TOT because the type of [modular](#) housing it rented to transients was not specifically listed in the definition. Counsel's response was that the definition was not intended to specifically list every type of hotel and that the type of housing claimed was not exempted anywhere in the [ordinance](#). The taxpayer had in-house counsel and the tax liability of \$40,000 would have been worth a superior court case; however, the taxpayer paid the tax rather than fight the board hearing decision.

13204. HOTEL EXEMPTIONS

The following are not considered hotels and thus are exempt from TOT:

- 1) Any hospital, convalescent home, sanitarium, medical clinic, rest home, home for aged people, foster home, or similar facility operated for the care or treatment of human beings.
- 2) Any asylum, jail, prison, orphanage, or other facility in which human beings are detained and housed under legal restraint.
- 3) Any housing owned or controlled by an educational institution and used exclusively to house students, faculty or employees, and any fraternity or sorority house or similar facility occupied exclusively by students and employees of such educational institutions and officially recognized or approved by it.
- 4) Any housing operated or used exclusively for religious, charitable, or educational purposes by any organization having qualifications for exemption for property taxes under the laws of California.
- 5) Any housing owned by a governmental agency and used for governmental purposes or to house its employees.
- 6) Any camp defined in the Labor Code or other housing furnished by an employer exclusively for employees.
- 7) Any camp defined in the Insurance Code, whether for profit or not, offering recreation activities and operated exclusively for minors.

NOTE: The above exemptions should be considered in addition to the exemptions allowed by state law for timeshares and campgrounds.

13205. OCCUPANCY

Occupancy means any use or possession, or right to the use or possession, of any room, rooms, or portion thereof, in any hotel for dwelling, lodging, or sleeping purposes.

13206. TRANSIENT

A transient is any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.

13207. RENT

Rent is any [consideration](#) charged, whether or not received, for the occupancy of hotel space 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.

13208. OPERATOR

An operator is any person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, or mortgagee in possession, licensee, or any other capacity. Where the operator performs functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator and shall have the same duties and liabilities as his/her principal.

13210 Ordinance Enactment Considerations: Tax Rate and Calculation of Tax

13210. GENERAL INFORMATION

The tax rate is determined by the board and is usually a percentage of the rental receipts charged by the hotel operator to transient guests.

EXAMPLE: The board has set the tax rate at 9%. A transient rents a room for two days at a rate of \$95/day. The TOT revenue from this rental would be calculated as follows: 2 days x \$95 = \$190 total rent; 9% of \$190 = \$17.10 TOT revenue.

13230-13232 Ordinance Enactment Considerations: Registration Requirements

13230. OPERATOR REGISTRATION

Language in the [ordinance](#) that requires the operator to register with the tax collector upon opening for business or purchasing a hotel may eliminate the responsibility of the tax collector to locate each new hotel operator in the [unincorporated area](#). This may be useful in a disagreement over assessment of taxes and penalties from the opening date, for operators that attempt to avoid registration.

The following information should be required from operators when registering:

- 1) Name of hotel;
- 2) Type of hotel (motel, RV park, bed and breakfast, etc.);
- 3) Type of ownership (individual, corporation, partnership, etc.);
- 4) Name of owner and/or operator - If corporation or partnership, require names of officers or partners;
- 5) Name, address, and phone number of person actually preparing TOT reports;
- 6) Mailing address of hotel or location of place of business;
- 7) Mailing address of corporate or partnership headquarters;
- 8) Mailing address for TOT report or TOT correspondence purposes;
- 9) Phone numbers for persons/entities and locations;
- 10) Starting date of new business;
- 11) Purchase or lease date if an existing hotel;
- 12) Date first rented units for 30 days or less, if different from lease or purchase date;
- 13) Name of the previous operator if hotel leased or purchased - The name should match previous records for the hotel;
- 14) Number and type of units subject to TOT rentals;
- 15) Number and type of units rented for more than 30 days;
- 16) Rates charged for each type of unit subject to TOT;
- 17) Information concerning seasonal rentals; and
- 18) Authorized signature.

13231. REGISTRATION CERTIFICATE

An operator may be required to conspicuously display a Transient Occupancy Registration Certificate at all times. The following information should be included:

- 1) Name of the operator;
- 2) Address of the operator;
- 3) Date the certificate was issued;
- 4) Statement that the operator has met the registration requirements concerning TOT collection;
- 5) Statement that the certificate does not authorize any unlawful business practices; and
- 6) Statement that the certificate does not imply that the operator has complied with any other governmental requirements or permits.

13232. TAX CLEARANCE CERTIFICATE

NOTE: This section was renumbered 13003.

13240 Ordinance Enactment Considerations: Collection Requirements

13240. GENERAL APPLICATION

The [ordinance](#) should be written to require the operator to collect the TOT at the same time the rent is collected from every transient. It is recommended that the ordinance state that the tax is a debt owed by the operator to the county and is only extinguishable by payment from the operator to the county.

13250-13256 Ordinance Enactment Considerations: Reporting and Remittance

13250. GENERAL RECOMMENDATIONS

The [ordinance](#) should require reporting of the tax and remittance at set intervals. The intervals could be monthly, quarterly, or as otherwise defined by the board. (It may be advisable to have the board allow for accelerated collection periods shorter than the normal reporting periods, at the discretion of the tax collector, in situations where the tax may be in jeopardy.) The report should be on a form provided or designed by the tax collector.

The report should contain, at a minimum, the following information:

- 1) Operator name and address;
- 2) Total rents charged that are subject to TOT;
- 3) Total amount of TOT being remitted;
- 4) Reporting period;
- 5) Exemptions granted;

- 6) Certificate number and/or federal identification number;
- 7) TOT tax rate;
- 8) Hotel name and location; and,
- 9) Due and delinquent dates.

CONFIDENTIAL REPORTING

The ordinance can be written to make reports and remittances confidential, other than those to government agencies for official use only. The tax collector should avoid providing operator TOT information that may give a competitor or potential competitor an unfair advantage.

13251. DUE DATE

The completed TOT report and remittance should be postmarked on or before the last day of the reporting interval defined by the [ordinance](#). If the last day to pay is on a holiday or weekend, a postmark on the first business day following the holiday or weekend should be timely.

13252. DELINQUENCY

Once an operator has become delinquent, penalties and interest may be assessed. Ordinances may be written to state that the penalties and interest become a part of the tax to be paid.

It may be advantageous to define and charge only interest (excluding the word penalty from the ordinance), due to the better treatment of interest over penalties in a bankruptcy.

PENALTIES AND INTEREST

The ordinance should define the amount of penalties and/or interest and when they are to be assessed. A reasonable approach would be one similar to other delinquent taxes: a 10% penalty upon delinquency and a 1.5% interest fee per month thereafter. However, other amounts and frequencies may be charged; for example: a 5% penalty upon delinquency, an additional 5% if the amount is still unpaid the following month, and additional interest at some point after that.

FRAUD

An ordinance may allow for an additional penalty if it can be determined that nonpayment of any tax owing is due to fraud. This would normally be determined when an audit of the operator's books clearly indicates rents intentionally underreported. A reasonable penalty would be 25%.

13253. REFUNDSREFUNDS TO TRANSIENTS

Refunds for overpayment of erroneously or illegally collected TOT should be refunded directly to the transient that paid but was not subject to the tax, or who paid the tax twice. The only exception would be an operator who can prove that he/she has paid or credited the transient for the erroneous or illegal tax collected, in which case the refund should be issued to the operator. In either situation, the refund should be made only upon verification of a written claim.

REFUNDS TO OPERATORS

An operator should receive a direct refund if a mathematical error was made in calculating the tax reported.

13254. AUDITS

PURPOSE AND PERFORMANCE OF THE AUDIT

Audits are necessary to determine whether operators are correctly reporting TOT. The [ordinance](#) should allow for an audit of the operator's books and clearly define which county department will perform the audit. Even though the tax collector usually collects the TOT, it may be advisable to have the county auditor or assessor perform the audit, as these departments employ audit staffs. No matter which department performs the audit, the ordinance should state that audit requests are at the tax collector's discretion.

WHEN TO PERFORM AN AUDIT

Audits may be performed at the following suggested intervals:

- 1) Any time the tax collector believes an operator is underreporting;
- 2) When there is a pending change in hotel ownership;
- 3) Any time the tax collector believes a business may be subject to the tax but has not registered;
- 4) At regular intervals, with the time between audits dictated by the number of hotels to be audited or staff available to audit.

Operators should be aware that they are subject to audit. This will help promote compliance and correct reporting.

13255. APPEALS

The ordinance should clearly set forth the remedies available to both the operator and the tax collector if an audit determines that an operator has underpaid the TOT. The appeal process should also be available to the operator when an estimation of the tax has occurred.

OPERATOR

Depending on which county department performed the audit, the operator should be allowed an appeal process with either the tax collector or the board or both. The appeal process should not be adversarial but rather an opportunity for the operator to present any documentation that would influence the results of the audit. The ordinance should require the operator to file an appeal within a specific time after the audit.

TAX COLLECTOR

The ordinance should require immediate payment of the deficiency, plus any penalties and/or interest accrued, if the operator does not file an appeal or if an audit is upheld on appeal.

13256. OPERATOR'S FAILURE TO REPORT / MAINTAIN ADEQUATE RECORDS

ESTIMATION OF TAX

The ordinance should allow the tax collector to determine a tax amount by any means available if an operator does not maintain or fails to make available adequate records for audit purposes or fails to report the tax. The tax determined to be due should be subject to change only if the operator provides records that are verifiable as accurate and true.

Following are suggested methods for acquiring information to estimate a tax amount.

- 1) Call the hotel and ask for a room rate.
- 2) Call a travel agency for rates for the hotel.
- 3) Check the newspaper travel section to see if the hotel advertises rates.
- 4) Have a staff member stop by the hotel to see if it has a published list of rates.
- 5) If the hotel is a member of Best Western or a similar group of hotels, acquire a catalog. Many times the rates are listed or are available through a toll-free phone number.
- 6) If the hotel previously paid taxes, check the records for prior occupancy history.
- 7) If there is no prior occupancy history, check the TOT records for similar hotels in the same area of the county.

METHODS OF ESTIMATION

When estimating the tax, it is suggested that the estimate be more than adequate. Following is an example of how an estimate is calculated.

Units

Usually the number of units can be determined from the records or by a trip to the hotel.

Rates

The rate is usually more difficult to determine, because most hotels have several rates depending on the size and type of room or the number of persons occupying the room. For estimation purposes, it is suggested that the estimate assume that every room in the hotel is the most expensive and all are occupied.

For example, the hotel has the following rates:

- Single Room: \$45/night single occupancy
- Double Room: \$65/night single occupancy
- Mini-Suite: \$95/night single occupancy
- Each extra person: \$15/night - maximum 4 people/room

The estimate should assume that every room in the hotel is a mini-suite with 4 people occupying the room. Therefore the rate is:

\$95 mini-suite single rate + \$45 (3 extra people @ \$15 each) = a nightly rate of \$140.

Occupancy

The calculation below assumes that every room is rented for every night of the reporting period.

Assume the estimate of TOT tax is for a reporting period of three months, April, May and June.

- April 30 days of TOT rental possible
- May 31 days of TOT rental possible
- June 30 days of TOT rental possible
- 91 total days of TOT rental possible**

Assume there are 252 units in the hotel and that the rate is \$140/night for a fully occupied mini-suite– (see Rates, previous page).

Assume the TOT rate is 9% and the penalty/interest rate is 10%.

Calculation:

\$140/night x 252 units = \$35,280/day gross receipts

91 days of possible reporting x \$35,280/day gross receipts =
\$3,210,480 total receipts for the 91 days unreported

9% of \$3,210,480 total receipts for reporting period =
\$288,943.20 estimated TOT tax due

\$288,943.20 x 10% penalty/interest rate =
\$28,894.32 estimated penalty/interest due

\$288,943.20 estimated tax + \$28,894.32 penalty =
\$317,837.52 total estimated tax and penalty due)

13260-13265 Ordinance Enactment Considerations: Enforcement Collections

13260. INTRODUCTION

Collections vary by county, as defined by [ordinance](#). The following sections ([M-13261 - M-13265](#)) describe collection techniques that are of a more severe nature and should be attempted only if they are defined in the ordinance. They are included in this reference manual for information only.

The county must institute an action to collect unpaid transient occupancy taxes within four years of the date the taxes were required to be paid. An exception is made for cases of fraud or if the property owner has failed to file a transient occupancy tax return.

13261. LIABILITY OF SUCCESSOR OWNER

A purchaser can be required to withhold from the sale price of the hotel (to a maximum of the sale price) any unpaid TOT owed by the seller. Upon request of the purchaser or the seller, the tax collector must either issue a tax clearance certificate or audit the records of the current owner within 90 days and then issue a tax clearance certificate within 30 days of the audit.

NOTE: Charter counties may issue tax clearance certificates but are not required to.

The purchaser, transferee, or other person or entity who obtains ownership may rely upon the tax clearance certificate as conclusive evidence of the tax liability as of the date specified on the certificate.

Any purchaser, transferee, or other person or entity who obtains ownership without obtaining a tax clearance certificate, or obtains a tax clearance certificate that shows a tax liability and fails to withhold sufficient funds in the escrow account, shall be held liable for the amount of the tax due.

13262. CERTIFICATES OF TAX LIEN

Certificates of Tax Liens for delinquent TOT should be recorded with the county recorder. The lien format is similar to that of an unsecured lien. The lien may be defined to have the same effect as a [judgment](#) and to attach to real property (similar to an unsecured lien). **The lien should be issued in the name of the person or entity responsible for collecting, reporting and owing the TOT tax to the county.** This is usually the operator. The operator may or may not be the owner of the real property. A lien should not be recorded against the owner of the real property (hotel) if the owner is not the person responsible for collecting, reporting and owing the tax.

EXAMPLE: If the owner of land builds a hotel and leases it to another company to operate, the owner should not have a lien recorded against him/her. A lien should not be recorded against the manager, unless the manager is also the operator collecting, reporting, and owing the tax. A lien should not be recorded against the mortgage holder of the real property (hotel).

13263. SEIZURE AND SALE

[Seizure and sale](#) may be defined by ordinance as similar to unsecured seizures. The seizure would be served on the delinquent TOT operator, with either personal or real property being seized (by ordinance). An administrative hearing should be part of the seizure and sale process. If necessary, the assets seized should be sold to recover the tax.

The following list describes the different types of seizures available.

- 1) Bank Account - The seizure document is served at the taxpayer's bank and any or all funds are seized, up to the amount owed.
- 2) Note Seizure - This is a variation of the bank account seizure. The tax collector should research the county recorder's records for any notes payable to the operator as beneficiary. Usually this would be the operator carrying back a loan on a piece of property he/she previously sold. Seizure is served on the person making payments to the operator.
- 3) Physical Seizure - The seizure document is served on the operator and the hotel is seized, including any money, funds, rents, and personal or real property.

This type of seizure may be completed in any of several different ways.

- a. The tax collector can institute a till tap, taking cash from the register as it is received. The tax collector can also require that all rentals be paid in cash. This type of seizure is most effective in hotels that have high occupancy levels. However, if the occupancy level is low, a till tap can be very time-consuming and expensive.
- b. The tax collector can take possession of the hotel but allow the operator to continue to operate while he/she attempts to locate the funds from another source. This is especially effective if the operator is advised that the business will be closed unless the deadline for paying the tax is met. If the seizure is early in the morning, a good deadline is 5 pm the same day (to allow the operator sufficient time to locate funds). The deadline can always be extended.
- c. The tax collector can take possession of the hotel and close the business until the taxpayer pays or the county sells the hotel. This should be a last resort. **Remember, the idea is to get the money with the least amount of effort.**

13264. MISDEMEANOR

Some county [ordinances](#) contain language stating that any person in violation of the ordinance is guilty of a misdemeanor, punishable by a fine (usually \$500 or less) and/or imprisonment in the county jail for a period of time (usually not more than 6 months).

13265. TITLE COMPANIES

Some counties have agreements with title companies to collect the TOT tax when a change of hotel ownership occurs.

13300 Revenue Retrieval: Locating New Resources

13300. HOTELS

Ideally, as new hotels open, they contact the tax collector to begin reporting their TOT. However, this does not always happen, and sometimes the smaller, bed-and-breakfast-type establishments may go unnoticed for long periods of time. Following is a list of methods that may be used to locate new hotels, including the smaller ones.

- 1) Check local phone books.
- 2) If the tax collector has field staff, they should watch for advertisements, signs or any other indication of new or existing hotels.
- 3) If the tax collector does not have field staff, other county departments with field staff should be asked to watch for new hotels and report them.
- 4) If a business license tax is collected in the unincorporated area, the files can be cross-checked against the TOT files.
- 5) Ask the county assessor for a list of all parcels in the unincorporated area that have a zoning for motel/hotel and that have improvements.
- 6) Ask the county assessor for a list of unsecured businesses that have a hotel/motel type of business in the unincorporated area. Ask for a complete list, including the motel/hotels that may have values too small to assess (the smaller bed-and-breakfasts may not have much assessable property).
- 7) Existing TOT taxpayers are another source of information. If they are paying TOT, generally they will want their competition to pay also.

- 8) Check local newspapers for advertising (travel section, help wanted ads, etc.).
- 9) Contact local chambers of commerce and better business bureaus. Some have directories of area businesses, which are available at little or no cost.
- 10) Check on-line travel services (America Online, Prodigy, etc.).
- 11) Check trade catalogs, like Best Western.
- 12) If staff members subscribe to travel magazines, have them bring in old issues.
- 13) Check travel agencies (officially or unofficially) for rooms available in the area.
- 14) Include a notice on all property tax bills or insert a separate notice with the tax bills, advising of the requirement to register and report TOT tax. This may be more applicable in smaller counties.
- 15) Contact the county planning department for a report of any new hotels in the area.

13310-13311 Revenue Retrieval: Case Histories

13310. THOUSAND TRAILS

Thousand Trails (TT) rents campsites to travel trailer owners, most of whom are members. In this instance, a nearby small mobilehome park, which also rented a few spaces to travel trailer owners, complained that TT rented company-owned trailers to the public.

Upon investigation, TT initially denied that it rented trailers to the public. The main office (out of state) contended that the trailers were used solely for promotional purposes, whereby potential members were allowed to use the trailers at minimal or no cost. However, literature acquired at the various parks and discussions with park staff indicated that the trailers were for rent to the general public or guests of members, who required accommodations because they did not own a travel trailer.

TT then changed its approach, stating that the ordinance did not specifically list the type of trailer that the company rented as a "hotel" and therefore they were not assessable.

The county auditor was asked to perform an audit, which determined that \$40,000 was due the county in TOT. TT was delivered a demand for payment of the back tax, along with registration and remittance forms for future TOT. TT then requested an appeal from the tax collector. A hearing was held and the decision was that TT owed the tax. TT then requested a hearing with the board of supervisors to request exemption from the tax.

TT, through its attorney, again argued that the trailer type was not specifically listed in the ordinance. County counsel argued that the ordinance listed various types of "hotels" but that the listing was never intended to be all-inclusive and there was nothing in the ordinance that exempted this type of trailer.

The board found that TT owed the tax. TT immediately paid the back tax with penalties and interest, and it has been reporting and paying promptly since then.

13311. WARNER SPRINGS RANCH

Warner Springs Ranch (WSR) is a resort in which owners each purchase a 1/2,000th ownership in the entire ranch, including the land, main buildings, rooms, swimming pools, golf course, exercise equipment, and restaurants.

When WSR opened in the early 1980s, it requested an exemption because only owners would be occupying the rooms. The exemption was granted. WSR subsequently went through some difficult financial times involving bankruptcy and a change in ownership. In early 1994, the tax collector became aware that WSR was advertising room and golf packages to the general public in local newspapers. Members of the tax collector's

staff made several visits to WSR in an attempt to register the company for TOT. However, WSR insisted that it was an ownership resort and not subject to the tax, even when shown its ads for renting to the public.

The tax collector requested that the county auditor perform an audit. The auditor determined that WSR had six different room rates, depending on the classification of the person renting the room. Following is a list of the categories:

- 1) Owner
- 2) Owner guest
- 3) Owner with extended family
- 4) Owner group
- 5) Golf package (public)
- 6) Ranch group (public)

The auditor originally determined that TOT was owed for all 6 categories and that the total back tax due was almost \$1 million. WSR was presented with a demand for that amount, and it immediately appealed to the tax collector. WSR stipulated that categories 4, 5 and 6 (above) were subject to the tax. In question were the owner and the owner-related rentals. WSR legal counsel, the auditor staff, county counsel, and the tax collector's staff presented legal research, recorded documentation, audit papers and testimony.

The decision was that categories 1, 2, and 3 qualify as timeshare owners as defined by [Revenue and Taxation Code section 7280](#) and [Business and Professions Code section 11003.5](#).

That decision was based on the fact that each owner had purchased a 1/2,000th undivided tenancy-in-common interest in the entire project. The owners pay real property taxes on their interests. To define an owner as a transient is contradictory.

There was no question that each owner purchased a right for use of occupancy of a lot, parcel, unit or segment of real property, as required of timeshares by the Business and Professions Code. Each owner had occupancy rights to a room for up to the entire year, based on availability. The occupancy periods were divided into 91,250 units (time periods), or 250 units times 365 days. This approach to occupancy periods is different from that of most timeshares, but it still meets the code.

The daily rate for an owner (category 1) was \$28, or less than the cost of cleaning the room. The deficit in cleaning costs was recovered in higher rates to every other category. The auditor contended that WSR was subject to the tax because of the manner in which it reported the cleaning costs as daily rates. However, WSR could have changed the reporting of these cleaning costs to maintenance fees and avoided the auditor's concerns entirely.

Since it was found that WSR met the timeshare requirement for owners, it followed that it met the criteria of [Revenue and Taxation Code section 7280](#) for categories 2 and 3 as it applies to guests and family. [Revenue and Taxation Code section 7280](#) states that a guest is not taxable if occupying a unit with an owner or exercising the owner's right of occupancy. The code also exempts a guest of an owner who is participating in any form of exchange program. WSR owners would be personally liable for TOT only if they charged their guests for use of their right to occupy.

The difference between category 3 (guest) and category 4 (owner groups) is that an owner can give only his/her right to occupy. A group implies several rooms, and an owner doesn't have a right to several rooms at one time.

Categories 1, 2 and 3 are exempt. Categories 4, 5 and 6 are taxable.

WSR immediately paid \$67,000 in back taxes, penalty and interest. It is currently reporting and remitting on a timely basis.

WSR is a unique business; there may be only one or two more ownership resorts like it in the entire United States. It isn't a resort/hotel as commonly understood, nor is it a traditional timeshare.

The key factors in the decision to classify WSR as a timeshare were the ownership interest, the owners' responsibility to pay real property taxes, and the occupancy rights.